TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 321

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, ET AL.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 12, 1960
CERTIORARI GRANTED OCTOBER 24, 1960

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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

Charge Against Labor Organization or its Agents.

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS: File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.
9-CC-158

Date Filed
August 4, 1958 C. I. W.

Compliance Status Checked by:

1. Labor organization or its agents against which charge is brought

Name
Local 761, International Union of Electrical, Radio and Machine Workers (AFL-CIO)

Address
5153 Poplar Level Road, Louisville, Kentucky

The above-named organization(s) or its agents has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b) subsection(s) (4)(A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.
(List subsections)

2. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 28, 1958, the above-named labor organization and officers, agents and employees thereof, has engaged or induced or encouraged employees of the following named contractors:

Ambrosius Construction Co., 2791 South Floyd St., Louisville, Ky.

Garst-Receveur Construction Co., 325 W. Ormsby Ave., Louisville, Ky.

General Counsel's Exhibit 1-A.

Wehr Constructors, Inc., 2127 South Floyd St., Louisville, Ky.
Service Erection & Machine Co., 3928 Bardstown Road, Louisville, Ky.

and employees of other employers, to engage in a concerted refusal in the course of their employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services for their respective employers, an object thereof being to force or require the above-named companies and other employers to cease doing business with the General Electric Company, and a further object thereof being to force or require the General Electric Company to cease doing business with the above-named companies and other employers.

3. Name of Employer
General Electric Company, Appliance and Television Receiver Division

4. Location of plant involved (Street, City, and State)
Appliance Park, Louisville 1, Kentucky

5. Type of establishment (Factory, mine, wholesaler, etc.)
Manufacturing establishment

6. Identify principal product or service
Automatic washers, dryers, ranges, dishwashers, Disposalls, Household refrigerators, freezers, room air conditioners.

7. No. of workers employed
10,000

8. Full name of party filing charge
General Electric Company, Appliance and Television Receiver Division

9. Address of party filing charge (Street, City, and State)
Appliance Park, Louisville 1, Kentucky.

General Counsel's Exhibit 1-A.

10. Tel. No.
GL 4-7511 Ext. 3164

11. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ L. H. MEANS
(Signature of representative or person making charge)
L. H. MEANS

August 4, 1958 (Date)

Manager—Relations and Utilities Department
(Title or office, if any)

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001)

General Counsel's Exhibit 1-C.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

NINTH REGION

—o—

In the Matter

of

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (AFL-CIO),

and

GENERAL ELECTRIC COMPANY, APPLIANCE AND TELEVISION RECEIVER DIVISION.

Case No. 9-CC-158.

—o—

COMPLAINT AND NOTICE OF HEARING.

A charge having been filed by General Electric Company, Appliance and Television Receiver Division, herein called General Electric, against Local 761, International Union of Electrical, Radio and Machine Workers (AFL-CIO), herein called Respondent, which charge has been duly served upon said Respondent, pursuant to Section 10(b) of the National Labor Relations Act, 61 Stat. 136, herein called the Act, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, the General Counsel of the Board by the undersigned Regional Director, issues this complaint against the Respondent and alleges that:

General Counsel's Exhibit 1-C.

1. Now and at all times material herein the Respondent has been and is a labor organization as defined in Section 2(5) of the Act. Admit.

2. (a) Now and at all times material herein General Electric is and has been a New York corporation licensed to do business in the State of Kentucky where it maintains and operates offices and a manufacturing plant located at Appliance Park, Louisville 1, Kentucky, where it is engaged in the manufacture and sale of automatic washers, dryers, dishwashers and other household appliances and which plant is the only plant involved in this proceeding. Admit.

(b) During the calendar year 1957 General Electric sold and shipped from its aforesaid plant in Louisville, Kentucky directly to points located outside the State of Kentucky, goods of a value in excess of $10,000,000.00. Admit.

(c) Now and at all times material hereto General Electric is and has been engaged in "commerce" and in operations "affecting commerce" as defined in Section 2, subsections (6) and (7) of the Act. Admit.

3. (a) Wehr Contractors, Inc. is an employer located at 2127 South Floyd Street, Louisville, Kentucky, engaged in the general construction business and at the times material herein was doing business with General Electric. DKIB.

(b) Service Erection & Machine Co. located at 3928 Bardstown Road, Louisville, Kentucky is an employer engaged in the erection of conveyor systems and allied equip-

ment and at the times material herein was doing business with General Electric. DKIB

(c) R. J. Hefferman Electrical Contractor located at 917 South 17th Street, Louisville, Kentucky is an employer engaged in the electrical contracting business and at the times material hereto was doing business with General Electric. DKIB.

(d) Garst-Receveur Construction Company located at 325 West Ormsby Avenue, Louisville, Kentucky is an employer engaged in the general contracting business and at the times material hereto was doing business with General Electric. DKIB.

(e) Liberty Engineering and Manufacturing Company located at 1450 South 15th Street, Louisville, Kentucky is an employer engaged in the fabrication and installation of sheet metal and iron work and at the times material herein was doing business with General Electric. DKIB.

4. Commencing on or about July 28, 1958 and thereafter the Respondent by picketing an entrance to the aforesaid premises of General Electric known as Gate No: 3 A, which entrance is and has been reserved for and used exclusively by employers other than and employees of employers other than General Electric, and by direct appeal, induced and encouraged employees of Wehr Contractor, Inc., Service Erection & Machine Co., R. J. Hefferman Electrical Contractor, Garst-Receveur Construction Company and Liberty Engineering and Manufacturing Company and of other employers, whose names are unknown to the Regional Director, to engage in strikes or concerted refusals in the

course of their employment to use, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services with the purpose or object of: (a) forcing the above-named employers and other employers, whose names are unknown to the Regional Director, to cease doing business with General Electric, and or (b) forcing and requiring suppliers and materialmen, whose names are unknown to the Regional Director, to cease doing business with the employers, other than General Electric, named above. Denied.

5. By the acts and conduct alleged above and by each of said acts, the Respondent has engaged in and is engaging in unfair labor practices as defined in Section 8 (b) (4) (A) of the Act, "affecting commerce" as defined in Section 2, subsections (6) and (7) of the Act. Denied.

PLEASE TAKE NOTICE that on the 27th day of August, 1958, at 10:30 o'clock in the forenoon (CDST), in Court Room No. 1, United States Post Office Building, Louisville, Kentucky, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations of the foregoing Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Section 102.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to the Complaint within ten (10) days from the date of service thereof and that unless you do so all of the allegations in the Complaint

shall be deemed to be admitted to be true and shall be so found by the Board.

IN WITNESS WHEREOF, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be issued by the Regional Director for the Ninth Region this 11th day of August, 1958.

LLOYD R. FRAKER,
LLOYD R. FRAKER,
Acting Regional Director, Ninth Region,
National Labor Relations Board,
1200 Ingalls Building,
6 E. Fourth Street,
Cincinnati 2, Ohio.

General Counsel's Exhibit 1-E.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter
of
LOCAL 761 INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Respondent,
and
GENERAL ELECTRIC COMPANY APPLIANCE PARK.

Case 9 CC 158.

ANSWER.

COMES the Respondent and for its Answer states the following:

I) Admits the following paragraphs:
1, 2a; 2b, 2c.

II) Does not have sufficient knowledge to reply to the following paragraphs of the complaint:
preliminary paragraph, 3a, 3b, 3c, 3d, 3e.

III) Deny the allegations contained in the following paragraphs: 4, 5.

WHEREFORE THE RESPONDENTS having fully answered pray that the charges and complaint be dismissed.

/s/ HERBERT L. SEGAL,
Attorney for Respondents.

General Counsel's Exhibit 1-E.

I hereby certify that a copy of his answer was sent by regular mail this 20th day of Aug. '58 to the following:

National Labor Relations Bd.,
Washington 25, D. C.

W. J. Barron Counsel,
G E Appliance Park, Ky.

General Counsel,
Wm. R. Ringer,
NLRB,
Washington 25 D. C.

/s/ HERBERT L. SEGAL,
Attorney for Respondents.

Intermediate Report and Recommended Order.

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

———o———

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (AFL-CIO),
and
GENERAL ELECTRIC COMPANY, APPLIANCE AND TELEVISION RECEIVER DIVISION.

———

Case No. 9-CC-158.

———o———

John H. Rogers, Esq. and John H. Arbuckle, Esq., of Cincinnati, Ohio, for the General Counsel.

Herbert L. Segal, Esq. and Mr. John Johnson, of Louisville, Ky., and Benjamin Sigal, Esq., of Washington, D. C., for the Respondent.

W. L. Clay, Jr., Esq. and William J. Barron, Esq., of Louisville, Ky., for the Company.

Trial Examiner: A. Bruce Hunt.

STATEMENT OF THE CASE

Upon the duly issued complaint of the General Counsel and the answer of the Respondent (Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO), a hearing in this matter was conducted by the undersigned Trial Examiner in Louisville, Kentucky, on Sep-

tember 22 and 23, 1958. The complaint alleges in substance, and the answer denies, that during July and August 1958 the Respondent violated Section 8 (b) (4) (A) of the Act by inducing and encouraging employees of employers other than General Electric Company, Louisville, Kentucky (herein called the Company) to engage in concerted refusals in the course of their employment to work and to perform services with the objects of: (1) forcing employers to cease doing business with the Company and (2) forcing suppliers and materialmen to cease doing business with employers who were engaged on projects on the Company's premises. All parties were represented by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record and to file briefs and proposed findings and conclusions. All parties filed briefs and the Company also filed proposed findings and conclusions. These documents have been carefully considered and the proposed findings and conclusions are rejected only to the extent that they are inconsistent with the detailed findings and conclusions set out below.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. The Business of the Company

General Electric Company, a New York corporation, operates a plant near Louisville, Kentucky, where it manufactures washers, dryers and other household appliances. During 1957 the Company shipped finished products valued in excess of $10,000,000 from its plant directly to points out-

side Kentucky. There is no dispute, and I find, that the Company is engaged in commerce within the meaning of the Act.

II. The Respondent

The Respondent is a labor organization admitting to membership employees of the Company.

III. The Alleged Unfair Labor Practices

A. *"Appliance Park"; the Respondent's representative status; the issue*

"Appliance Park" is the name given by the Company to its plant near Louisville, Kentucky. Four public roads surround Appliance Park. The acreage is approximately 1,000, almost in the shape of a square. The property is not fenced, but around it is a drainage ditch of such width and depth that vehicles can enter and leave the premises only on 5 roadways across culverts. These 5 roadways for vehicular ingress and egress are inaccurately called "gates," as appears below, and are numbered 2, 3, 3A, 4 and 5.

At the time of the hearing there were 10,500 employees at Appliance Park, of whom substantially more than one-half were production and maintenance employees for whom the Respondent is the certified bargaining representative. As recited below, during July 1958 the Respondent called a lawful strike against the Company.[1] Picketing occurred at all gates, including Gate 3A which the General Counsel and the Company contend had been reserved by the Com-

[1] In its brief, the Company says that at the time of the strike the Respondent represented 7,600 employees.

pany for several years for the exclusive use of contractors and their employees who came to Appliance Park to perform work. The General Counsel does not contend that the picketing at gates other than 3A was invalid. Our question is whether, under the circumstances to be recited, the picketing at Gate 3A was prohibited by the secondary boycott provisions of the Act. Before we reach that question it is necessary to discuss further the operations of the Company, its use of local contractors, the strike, and the picketing.

B. *The Company's operations; its use of contractors*

Appliance Park contains 13 buildings, 6 of which house the departments of the plant in which manufacturing operations take place as follows: No. 1, washers and driers; No. 2, ranges; No. 3, dishwashers and disposalls; Nos. 4 and 5, household refrigerators and freezers; and No. 6, room air conditioners. Each of these departments is operated on an independent basis with its management being charged with the responsibility of making a profit. From time to time the management of one of the departments will contract with local concerns for needed services. A seventh department, called the Relations and Utilities Department, also sometimes contracts with local concerns for services to be performed in other buildings and upon the grounds. The following kinds of work illustrate the variety which is done under contract: (1) maintenance work; (2) the installation, repair or alteration of air conditioning, ventilating, heating and electrical equipment; and (3) work in converting to the manufacture of new models, such as, revamping manufacturing facilities, retooling, rearranging

conveyors, and installing new facilities, equipment and presses.

Work is awarded to contractors because (1) the Company's employees lack the manpower or skill to perform it, or (2) the work would be more costly if performed by the Company's employees. In the latter instances a unique competitive bidding system exists. Within the Relations and Utilities Department there is a department called "Central Maintenance" which sometimes is asked by the management of a department to bid in competition with contractors on work to be done in Appliance Park.[2] This is in line with the independent operation of each production department, mentioned above. Weber, identified in the last footnote, testified that the management of the production departments use the service of Central Maintenance in preference to contractors "whenever they possibly can" and that "all efforts are made to funnel work down through Central Maintenance consistent with the labor force and so forth they have and with the type of job itself." In instances where Central Maintenance's bid is low, the job is awarded to it. If, however, a delay intervenes and Central Maintenance's employees of the needed qualifications have become occupied on jobs elsewhere in Appliance Park, Central Maintenance may decline to accept the award.

[2] Lester H. Means, the manager of the Relations and Utilities Department, testified that the Company has "a large maintenance group of our own that does the routine day-in-and-day-out type of maintenance." Robert H. Weber, a buyer in that department, testified that he was unsure but thought that there were about 100 employees in Central Maintenance. The record does not disclose, however, the proportion of the total maintenance group that Central Maintenance constitutes. The Respondent asserts that the Central Maintenance employees are in the production and maintenance unit which it represents.

It thus appears that the employees of contractors work in buildings and elsewhere in Appliance Park in proximity to employees of the Company and that the work of the former employees is of a class and sometimes even of an exact kind as that which is performed by the Company's employees; that is, the contractors' employees, like the Company's employees, are engaged in work related to the production of finished products or to the maintenance of the plant.[3]

C. *Restrictions upon the use of the 5 gates; the strike; the valid picketing at 4 gates; the allegedly invalid picketing at Gate 3A*

We have seen that Appliance Park has an acreage of about 1,000 in almost a square shape. Therefore, each side is about 6,600 feet in length. We have seen too that there are five entrances to Appliance Park which are called "gates." Numbers 4 and 5 are on the west and south sides, respectively. Numbers 2, 3 and 3A intersect Buechel Bank Road, a public road, on the north side. Although picketing occurred at all 5 gates, it is alleged to have been invalid only at Gate 3A. The diagram attached as Appendix, not to scale, shows the area of Gates 3 and 3A which are about 550 feet apart, measured along Buechel Bank Road from points midway between the gates. Appliance Park is to the left of that road as one looks at the diagram.

The reader's attention is directed to the numerals 3 and 3A near points on the diagram where 2 roadways into Ap-

[3] The General Counsel, in his brief, acknowledges that "some of" the types of work done by the contractors "had on occasion, in times past, been performed by employees of Charging Party's General Maintenance Force known as Central Maintenance."

pliance Park intersect Buechel Bank Road. In a literal sense it is inaccurate to say that there is a gate at either point. On the east and west sides of the two roadways there is a metal stanchion. An aluminum chain across each roadway, attached to stanchions, serves to block ingress and egress of vehicles on nonworking days and during the night hours of 6 p. m. to 6 a. m. As illustrated on the diagram, at Gate 3 there is a gatehouse. Guards in the plant protection force are stationed there during hours when the roadways are open to traffic. At Gate 3A, however, there is neither a gatehouse nor a guard and, when the chain is not across the roadway vehicles entering Appliance Park at that point may be driven without challenge in a southerly, then easterly, direction to a point near the gatehouse where the occupants must establish to a guard's satisfaction their right to enter Appliance Park.[4] Identification stickers for motor vehicles, differing in sizes, shapes and colors, enable a guard to tell upon sight the gate through which a vehicle is anthorized to enter Appliance Park and whether the vehicle is owned by an employee of the Company or by a contractor or his employee. In addition, there are identification cards for employees of the Company and contractors. Employees of the Company use Gates 2, 3, 4 and 5, but not 3A.[5] Trucks bearing raw materials for the plant, or finished products from it, use Gates 3 and 4. Gate 3A is used by contractors and their employees, and at all times material a sign there has directed the Company's employees to use other gates.

[4] During the strike a guard was stationed at Gate 3A but ordinarily no one is stationed there.

[5] See footnote 8.

With the above recitation of the Company's business and its use of contractors, we come to the strike against the Company and to the validity of the picketing. On July 27, 1958, the Respondent called a strike against the Company because of 24 unsettled grievances. Each of the five entrances was picketed peacefully. The signs recited clearly that the Respondent's dispute was with the Company only:

Local 761
ON STRIKE
G. E. UNFAIR

Picketing at Gate 3A was highly successful. By oral appeals and the display of picket signs, the Respondent induced employees of contractors not to enter Appliance Park for the purpose of working there. Few, if any, employees of contractors passed the pickets for that purpose although some entered to obtain their tools. The picketing was less successful at other gates, however, and the Company continued its operations. More than 2,000 production and maintenance employees, represented by the Respondent, worked during the strike, as did many others who are outside the bargaining unit. On August 9, picketing at Gate 3A was enjoined in a proceeding under Section 10 (1) of the Act. On August 10 the strike ended and all picketing ceased. The question for decision is whether the picketing and oral appeals at Gate 3A violated Section 8 (b) (4) (A), which reads:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4) * * * to induce or encourage the employees of any employer to engage in * * * a concerted refusal in the

course of their employment to * * * handle or work on any goods * * * or to perform any services where an object thereof is: (A) forcing or requiring * * * any employer or other person * * * to cease doing business with any other person; * * *. *Provided*, that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

D. *Factual summary*

Before discussing the issues, certain points should be made clear. *First*, the Respondent is the exclusive representative of the Company's production and maintenance employees. *Second*, the strike was a lawful one. *Third*, the picketing was peaceful.[8] *Fourth*, the General Counsel does not contend that the picketing at Gates 2, 3, 4 and 5 was invalid. *Fifth*, the picket signs made it clear that the Respondent's dispute was with the Company only. There was no effort by the Respondent to halt the operations of any contractor at any place other than Appliance Park. *Sixth*, there is no occasion here to apply the ally doctrine of *International Union of United Brewery etc. (Adolph Coors Co.)*, 121 NLRB No. 35, and cases cited therein. This is so because all awards to the contractors were made

[8] The Company asserted, and offered to prove, that on the first day of the strike the Respondent engaged in mass picketing and violence. The evidence was rejected because the subject is not in issue under the pleadings. There is no allegation that Section 8 (b) (1) (A) was violated.

before the strike and, therefore, did not cover jobs which would have been performed by the Company's employees if the strike had not occurred. *Seventh*, one defense contention need not be definitely decided. The Respondent contends, and the General Counsel and the Company deny, (1) that Gate 3A was not reserved exclusively for contractors and their employees, (2) that some of the Company's employees also used that gate, (3) that the Company did not inform its employees at any time that the gate was not available to them, and (4) that the Company did not give assurances to the Respondent that the Company's employees would not be permitted to use the gate during the strike. It is unnecessary to detail the evidence and to resolve all the conflicts. This is so because the Respondent will prevail here even if its contentions concerning the use of the gate are unfounded. Therefore, the discussion below is based upon the premise that Gate 3A was reserved exclusively for contractors, their employees and suppliers,[7] and that the Respondent, in picketing at that gate, did not seek to solicit any of the Company's employees to cease work. Certain observations about the Respondent's contentions are made in the footnote, however.[8]

---

[7] The evidence establishes that employees of contractors were stopped by pickets at Gate 3A. It is alleged, but not proved, that employees of contractors' suppliers also went to Gate 3A during the strike. If no employee of any contractor worked during the strike, as the General Counsel and the Company contend, it may be that the contractors had no need for materials during the strike.

[8] As noted in the factual recital, during working hours anyone may enter upon the roadway at Gate 3A and proceed as far as the gatehouse because there is no guard or obstruction at that gate during those hours. The question is whether an employee of the Company who uses that roadway is likely to be unobserved by a guard at the gatehouse or, if observed, to pass without challenge. There is testimony by the Respondent, which the General Counsel and the Company dispute, that upon rare occasions several employees among

(Footnote continued on following page)

E. *The first issue: Is this a "common situs" case?*

The Company asserts that this is a common situs case. The Respondent asserts the contrary. The General Counsel did not state his position in precise words. Although he cites certain common situs cases, he speaks of the premisos of a primary employer, and I think that he agrees with the Respondent.

Few definitions of the term "common situs" have come to my attention. One appears in *Retail Fruit & Vegetable Clerks' Union et al. (Crystal Palace Market)*, 116 NLRB 856, as follows:

> • • • a "common situs"—*i.e.*, premises jointly occupied by primary and secondary employers.

Another definition appears in the Board's brief to the Court in a pending case, *Office Employees International Union, et al. v. N. L. R. B.*, No. 14479 (C. A. D. C.), for review of 120 NLRB No. 58. There it is said:

> Here we have a "common situs" situation, *i.e.*, a situation where the employer involved in the dispute [with a labor organization] shares the premises with other employers who are not involved in the dispute.

(Footnote continued from preceding page)
the 10,000 were permitted to go on after reaching the gatehouse. It may be that once in a while an employee of the Company, coming from Gate 3A, has passed the gatehouse without being noticed or challenged by a guard. But if a guard noticed but did not challenge the employee, the guard violated his instructions. The Company has sought to require its employees to use the other gates. The guards have received appropriate instructions. Automobiles belonging to employees have stickers which permit entrance only at other gates. A sign at Gate 3A says that employees must enter elsewhere. Turning from this subject to the Respondent's assertion that the Company gave no assurance that during the strike it would not permit its employees to use that gate, and that the Respondent anticipated that such employees would be permitted to use the gate because the Company was doing everything within its power to persuade employees to return to work, the short answer is that, insofar as appears, (1) the Respondent did not ask for such assurance, (2) no nonstriking employee sought to use Gate 3A, and (3) the Respondent did not postpone picketing at that gate until nonstrikers might seek to us it but began to picket all gates simultaneously.

It is apparent that Appliance Park is not "jointly occupied" by the Company and the contractors and that the Company does not "share its premises" with the contractors. Nor is Applicance Park a place "where" the primary and secondary employers' businesses were both located on the same premises.'"[9] On the contrary, Appliance Park is a hugh manufacturing establishment of more than 1½ square miles which is owned and operated by the Company and at which over 10,000 of its employees plus an undisclosed number, but relatively few, employees of contractors are engaged in work toward the same ends, namely, the manufacture and sale of the Company's household electrical appliances and the maintenance of the manufacturing establishment. If we have a common situs case here, as distinguished from a single situs or separate premises case, I find it difficult to imagine a situation where any manufacturing plant would not be a common situs at one time or another. Rarely can a manufacturer do business in our commercial society unless employees of other employers come to his plant and work in performing the business of their respective employers, whether it be to install fixtures or equipment, to do repair or service work, to deliver or to receive a truckload or a carload of materials, or for other purposes. Moreover, if we have a common situs case here, the proviso to Section 8 (b) (4), which is discussed near the end of this Intermediate Report, may apply to relatively few, if any, of the Nation's vast number of manufacturing plants.

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[9] A quote from a quote in footnote 11 of the opinion in *Retail Fruit & Vegetable Clerks' Union, et al. v. N. L. R. B.*, 249 F. 2d 591, 41 LRRM 2131, 2138 (C. A. 9), enf'g *Crystal Palace Market, supra.*

F. *Are the Act's secondary boycott provisions applicable to the picketing at Gate 3A?*

There are no recent precedents which are in point here. The cases which were litigated in the early days of the Taft-Hartley Law are uniformly against the General Counsel's position. If his position is sound, substantial revisions in decisional law must be made by the Board and the Courts with a sharp curtailment of the right to strike and to engage in traditional primary strike activity as provided in Sections 7 and 13 of the Act.[10]

1. The Board cases

The Board has consistently said that the secondary boycott provisions of the Act were not aimed at traditional primary strike activity although one object and result of such activity is to terminate the business which secondary employers do with the struck primary employer at the premises occupied solely by the latter. An early case is *Pure Oil Company*, 84 NLRB 315, which did not receive judicial review. Its doctrine is applicable today since the Board cited it with approval as recently as *Polar Water Co.*, 120 NLRB No. 25. The factual situation in *Pure Oil* is recited from the Board's 14th Annual Report, page 96:

[10] Section 7 provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Section 13 provides: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications of that right."

> • • • an oil workers' union, in support of its strike against the Standard Oil Company over the terms of a new agreement, picketed Standard Oil's own refinery and dock. As a consequence, employees of Pure Oil refused to cross the picket line to enter upon the dock in order to load Pure Oil's products on a tanker for shipment elsewhere. Before the strike, this work had been performed regularly by Standard Oil's employees under an arrangement between Standard Oil and Pure Oil. In addition, the crew of a tanker (members of the National Maritime Union) refused to receive Pure Oil cargo unless loaded by Standard Oil foreman, who were not involved in the dispute.

In *Pure Oil* the Board dismissed allegations of secondary boycott activity and quoted the late Senator Taft's assurances that primary strikes over terms and conditions of employment were recognized *throughout the Act* as "entirely proper" and that Section 8 (b) (4) (A) did no more than "reverse the effect of the law as to secondary boycotts." The Board held in *Pure Oil* that Section 8 (b) (4) (A) was not "intended to curb traditional *primary* action" and "does not outlaw any of the primary means which unions traditionally use to press their demands on employer." This is so, said the Board, although

> A strike, by its very nature, inconveniences those who customarily do business with the struck employer • • • [and] any accompanying picketing of the employer's premises is necessarily designed to induce and encourage third persons to cease doing business with the picketed employer.

Our Respondent's case is stronger than was the case of the respondent in *Pure Oil*. This is so because the employees of *Pure Oil*, the secondary employer, were induced not to enter upon the premises of Standard Oil, the primary employer, to do work which had no relation to Standard Oil's production, whereas here the contractors' employees were at work in the production and maintenance aspects of the primary employer's business at Appliance Park. It follows that if the General Counsel is to prevail here, *Pure Oil* must be overturned. But *Polar Water, supra*, says it is still law.

Another early case is the 1949 decision in *Ryan Construction Co.*, 85 NLRB 417. That case also was not reviewed by a court and some authorities disagree whether its doctrine was approved by the Supreme Court of the United States, as set out in the footnote.[11] In *Ryan*, the respondent union picketed the entire premises of the primary employer, Bucyrus, including a gate which served employees of Ryan, a construction company that was engaged in erecting *an addition to the plant*. The Board, holding that picketing of that gate was not a violation of Section 8 (b) (4) (A), said:

> • • • Concededly, an object of the picketing [at all gates] was to enlist the aid of Ryan employees, as well as that of employees of all other Bucyrus customers and suppliers. However, Section 8 (b) (4) (A) • • • was intended only to outlaw certain *secondary*

[11] Board Members Leedom and Rodgers expressed their opinion in *Crystal Palace Market, supra*, at 116 NLRB 859-60. Member Bean expressed his opinion in footnote 20 of the same case at page 866. The two other then members expressed their opinion at pages 868-70. The Court of Appeals for the Ninth Circuit expressed its opinion upon review of the same case, *sub nom. Retail Fruit & Vegetable Clerks' Union, et al. v. N. L. R. B., supra.*

boycotts, whereby unions sought to enlarge the economic battleground *beyond the premises of the primary Employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute,* it cannot be called "secondary" even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons. It makes no difference whether 1 or 100 other employees wish to enter the premises. [Latter emphasis supplied.]

The *Ryan* decision, it should be noted, was not without dissent, and today there are two members of the Board who have expressed their disagreement with it. *Crystal Palace Market, supra.* But *Ryan* has not been overruled. *Roanoke Bldg. & Const. Trades Council (The Kroger Co.),* 117 NLRB 977, 978. Moreover, even if *Ryan* had been overruled, that circumstance would not be authority necessarily to hold here in favor of the General Counsel. This is so because we have here a case which is stronger from the standpoint of our Respondent. In *Ryan* the dissent points out that "Ryan's building operations [were] manifestly unrelated to the [production] operations of Bucyrus' struck plant * * * [and] the construction site was located on a portion of Bucyrus' premises specifically set aside for such purposes, with its own, exclusive means of access." Here, on the other hand, employees of the contractors worked in the same buildings and work areas as did employees of the Company, and the work of the contractors' employees was related to the operations of the struck plant,

being of the class, and in part the same kind, of work as was performed by the Company's employees.[12]

In *Santa Ana Lumber Co.*, 87 NLRB 937, the Board held that the solicitation of secondary employees not to enter a struck plant to load or unload goods is "traditional *primary* action." *Santa Ana*, an old case, was approved recently by two Board members, as noted immediately below.

2. The Court cases

Two of the cases to be discussed here are *N. L. R. B. v. International Rice Milling Co.*, 341 U. S. 665, 71 S. Ct. 961, and *Di Giorgio Fruit Corporation v. N. L. R. B.*, 191 F. 2d 642 (C. A. D. C.), cert. den. 342 U. S. 869. These cases, along with *Santa Ana*, were cited approvingly in the main opinion in *Crystal Palace Market, supra*, when the validity of picketing at premises occupied solely by a primary employer was being discussed:

> * * * we adhere to the rule established by the Board, with judicial approval, that accommodation of the policy of Section 13 (preserving the right to engage in a primary strike) requires that more latitude be given to picketing at such separate primary premises than at premises occupied in part (or entirely) by secondary employers. See *International Rice Milling* * * * *Di Giorgio* * * * *Santa Ana* * * *

In *Rice Milling*, the primary employer, Kaplan, operated a mill at which his employees went on strike. The pickets

[12] The Company seeks to distinguish *Ryan* upon the ground that here Gate 3A was used exclusively by contractors and their employees and suppliers while in *Ryan* the nonstriking employees could have used the "Ryan gate" although they had not used it before picketing began. If I correctly understand the principle for which *Ryan* stands, the possible use of the gate by nonstrikers was a minor factor in the decision.

induced employees of neutral employers not to enter the mill to obtain grain. The Board held, and the Court agreed, that the Act does not prohibit such inducement. According to the Supreme Court,

> * * * The picketing was directed at the Kaplan employees and at their employer in a manner traditional in labor disputes. * * * A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business generally are not aimed at concerted, as distinguished from individual, conduct by such employees. Generally, therefore, such actions do not come within the proscription of § 8(b) (4), and they do not here.

In *N. L. R. B. v. Denver Bldg. & Const. Trades Council*, 341 U. S. 675, 687, 71 S. Ct. 943, 951, the Court said that the union activity in *Rice Milling* is "traditional and permissible in a primary strike."[13]

In *N. L. R. B. v. Service Trade Chauffeurs*, 191 F. 2d 65, 28 LRRM 2450 (C. A. 2), the Court commented upon *Rice Milling* as follows:

> We take this to mean that a union may lawfully inflict harm on a neutral employer, without violating §8 (b) (4), so long as the harm is merely incidental to a traditionally lawful primary strike, conducted at the place where the primary employer does business.

[13] The Company attempts to distinguish *Rice Milling* on the ground that it involved only a single incident when two neutral employees came to the struck mill, whereas in the instant case various employees of contractors came to Gate 3A at different times. This contention is without merit, as is shown by *Di Giorgio*, discussed below, and by the above quotation from *Ryan* that "It makes no difference whether 1 or 100 other employees wish to enter the premises."

In *Di Giorgio*, the Board urged to the Court, and the Court agreed, (1) that the secondary boycott provisions of the Act "do not apply to activities of pickets at the place of their employment where they are using the picket line to enforce their right to strike against their own employer" and (2) that the pickets' inducements of neutral employees not to deliver goods or produce to the struck employer were valid. The concurring opinion in *Di Giorgio* relies upon *Rice Milling* and says that there was no inducement to *concerted* activity. The main opinion relies instead upon the Court's earlier determinations in *Denver Bldg. & Const. Trades Council v. N. L. R. B.*, 186 F. 2d 326, 26 LRRM 2515, which, said the Court, had not been reversed in pertinent part in *N. L. R. B. v. Denver Bldg. & Const. Trades Council, supra*. A pertinent part is that

> The context of the words "cease doing business" [appearing in Section 8 (b) (4) (A)] and the meaning attributed to them by the legislative history of the Act, by the Board and by the courts, require that they be construed as condemning as an unfair labor practice a secondary boycott or strike but not primary action even when an object in a limited sense may be construed to be to force or require an employer to cease doing business with another. * * *

3. The General Counsel's contentions

We come to the General Counsel's contentions, keeping in mind the principles of the above cases plus the facts that (1) the Company's employees use Gates 2, 3, 4 and 5; (2) the secondary employees of carriers for the Company and its customers and suppliers also use Gates 3 and 4; and

(3) the employees of contractors and their suppliers are the *only* employees who use Gate 3A. The General Counsel asserts in substance that

> The picketing at Gate 3A was not primary picketing but was an invalid extension of the primary dispute because the Company's employees (the primary employees) use other gates;
>
> The picketing at Gate 3A was of deliberate design with the sole object of reaching employees of secondary employers and was not merely an "unavoidable incident" of primary strike activity;[14]
>
> It was incumbent upon the Respondent to conduct its picketing so as to reach employees of the Company without reaching other employees *except incidentally*;[15]

[14] The term "unavoidable incident" appears in *Columbia-Southern Chemical Corp.*, 110 NLRB 206, which involved both a common situs construction project plus picketing some distance away from the situs of the primary dispute thereon, and which, therefore, is inapposite. The term appears also in the main opinion of two Board members in *Crump, Inc.*, 112 NLRB 311, which also is inapposite. *Crump* involved a factual situation somewhat like that in *Ryan*. Crump was engaged in constructing an addition to Kaufmann's department store. Unions representing Kaufmann's employees went on strike. Crump's construction work was affected by the activities of pickets. Four members of the Board issued three opinions. A majority condemned certain conduct of the pickets *but not the picketing itself*. The main opinion holds that the respondent "engaged in the type of conduct which has been proscribed as unlawful by the Board in common situs cases." Another member held that the entire premises constituted the single situs of Kaufmann, the primary employer. Still another member held that the construction site constituted the separate situs of Crump, the secondary employer.

[15] In *Crystal Palace Market, supra*, two members of the Board wrote of a requirement "that the picketing be so conducted as *to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching primary employees.*" But this quotation, if applied here, would be sharply at odds with the quotation set out on page 9 above in which *Rice Milling*, *Di Giorgio* and *Santa Ana* are cited. Both quotations are found in the same opinion. Since the signers of the opinion were not advancing inconsistent doctrines, it follows that in *Crystal Palace Market* they were speaking of a common situs situation when they wrote as quoted in this footnote. Their opinion makes that point clear. Moreover, over 40 employers occupied the premises in that case, as the Court's opinion recites, footnote 16, *post*.

and, now quoting the General Counsel—in decisional law there is

> one clear point, *i.e.* that a determination of legality or illegality of picketing activities turns not upon whether the picketing occurred at the premises of the primary employer [occupied solely by him], but upon whether a definite purpose of the picketing is to disrupt operations of the secondary employer [even at premises occupied solely by the primary employer], and whether the picketing of the primary employer could have been carried on effectively without embroiling secondary employers.

The words in brackets within the quotation clarify the position of the General Counsel. The distinction which he draws between the picketing at Gate 3A, on the one hand, and at Gates 3 and 4, on the other, is that while there were appeals to secondary employees at all three gates, such appeals at Gates 3 and 4 were incidental to the appeals to primary employees who also used those gates, whereas at Gate 3A the appeals were exclusively to secondary employees. Two basic fallacies are apparent in the General Counsel's position. First, he would apply here certain principles which were established in cases that involved picketing at a *secondary* employer's separate premises or at a common situs. Second, he asserts in substance that a union which is the statutory representative of employees and which, in the course of a lawful strike, pickets the premises occupied solely by the primary employer, may not appeal *deliberately and directly* to employees of secondary employers to stay out of the struck plant. In these situations, the General Counsel says in effect, such unions, in

appealing to employees (as distinguished from appealing to the consuming public), must direct their appeals only to the primary employer's nonstrikers.

If the General Counsel's position is sound, then Senator Taft was much in error when he said, in speaking of Section 8 (b) (4) (A), that "All this provision of the bill does is to reverse the effect of the law as to secondary boycotts." Instead of such a limited reversal, the result would be a drastic limitation upon (1) the right to strike for a lawful object and (2) traditional primary strike action. This result follows logically from the General Counsel's position. Thus, if a primary employer, involved in a lawful strike by his employees at premises occupied solely by him, can use a separate entrance to isolate contractors' employees from peaceful primary picketing, he also can use a separate entrance to isolate employees of his suppliers and customers, as well as employees of carriers for himself and his suppliers and customers. The Company is frank to say in its brief that this is so. The General Counsel declines to take a position in his brief, but compare his position in *Lumber and Sawmill Workers Local Union 2409, et al. (Great Northern Railway Company)*, Case No. 19-CC-109, Intermediate Report (SF)-567, now pending before the Board. It follows logically too, I believe, in a situation where the primary employees use the *same* entrance as employees of suppliers and customers (or employees of carriers for either), that *oral* appeals by the primary striking employees to the secondary employees not to cross their picket line would be invalid. This is so because there is no real difference in the *object* of the striking employees when they make the oral appeal at a

joint entrance and when they use a picket sign at a segregated entrance. I cannot reconcile these propositions with the legislative history of the Act or with the decisional law.

4. The General Counsel's authorities

We consider now the principal authorities cited by the General Counsel and the Company. Two of the cases are distinguished in footnote 14. Another, *N. L. R. B. v. Denver Bldg. & Const. Trades Council, supra*, is inapposite because it involved a common situs situation.

Moore Drydock Co., 93 NLRB 547, involved a roving situs which came to rest at the premises of the *secondary* employer where the picketing occurred.

Incorporated Oil Co., 116 NLRB 1844, is a case in which the Board's Order was set aside by the Court in *Local 618, Automotive Employees v. N. L. R. B.*, 249 F. 2d 332, 41 LRRM 2106 (C. A. 8), and I do not know whether the majority opinion of the Board still represents a majority's views. Assuming that the opinion does, the fact remains that the opinion is based expressly upon an unusual situation and that the primary employer who owned the picketed premises was not engaged in business operations there, whereas here thousands of the Company's employees were at work during the strike.

Crystal Palace Market, supra, which received judicial approval, is distinguished by an excerpt from the Court's opinion as set out in the footnote.[16]

[16] The Court's opinion is cited in footnote 9 above. The opinion emphasizes that many employers (merchants) conducted their *entire* business operations as *lessees* in the building owned by the primary employer. Thus, "* * * Long, the primary employer against whom Local 648 was picketing, owned the

(Footnote continued on following page)

Atomic Projects & Production Workers, et al (New Mexico Bldg. Branch, etc.), 120 NLRB No. 58, is now before the Court of Appeals for the District of Columbia Circuit, sub nom. *Office Employees International Union, et al. v. N. L. R. B.*, No. 14479. It is distinguished for reasons set out in the Board's brief to the Court, as recited in the footnote.[17]

5. Conclusions

My conclusions embody nothing new. They reflect only established law. I hold that Section 8 (b) (4) (A), which was aimed at secondary boycotts, does not contemplate such drastic inroads on traditional primary strike activity as inheres in limiting union pressures solely to an appeal to workers who are employed directly by the struck employer. I hold also that traditional primary strike activity lawfully includes, but is not limited to, deliberate attempts to halt the operations of the struck plant by peacefully soliciting secondary employees, orally or by picketing:

(Footnote continued from preceding page)
entire market building. * * * Here, in addition to the primary employer owning the premises where it does business, there are neutral employers leasing space from the primary employer; there are not one, two or three neutral employers involved here, but between two and three score, and their businesses would have been materially affected by the pickets at the entrance to the market. * * * Here the entire business operations of the many neutral employers were being conducted on premises owned by Long, the primary employer, and will probably continue to operate thereon so long as business conditions justify. This unique situation (not duplicated in any case called to our attention) may well account for the differences of opinion among Board members as to principles properly applicable to the facts of this case. * * *".

[17] In that case the primary employer, Sandia Corporation, was engaged in work for the Atomic Energy Commission within the confines of a military installation. As the brief recites, the case differs "from the normal primary picketing situation where a union pickets the separate premises of an employer with whom it has a dispute. * * * This is wholly different from the instant case where, as shown in the text, we have a 'common situs' situation in which Sandia Corporation was only one of many employers operating on premises under the direct control of *a third party*, the military authorities." [Emphasis added.]

(1) not to bring materials or goods into, or to take them from, the struck plant; and

(2) (a) not to contribute to production or maintenance by working in the struck plant, and (b) not to supply materials for use by the secondary employees mentioned in (a).

I agree with the General Counsel and the Company that at Gate 3A the Respondent's appeal was to secondary employees only, but I say that that was merely a part of traditional primary strike action. The picketing at Gate 3A was for the same lawful object as was the picketing at the other four gates, namely, to halt the operations of Appliance Park by appeals which were directed collectively to (1) the Company's employees at Gates 2, 3, 4 and 5; (2) the consuming public at any gates which it used; (3) the secondary employees who were engaged in transporting raw materials and finished products, and who used Gates 3 and 4 along with the Company's employees—and it may be reiterated now that the picketing at Gates 3 and 4 is not alleged to have been invalid—and (4) the contractors' employees at Gate 3A. In none of these instances was a neutral employer brought into the controversy except as a consequence of permitted traditional primary strike action—and Section 8 (b) (4) (A) does not protect the business of a neutral employer within the situs of a primary dispute. In this case we have *valid primary activity with secondary effects.* We do not have *invalid secondary activity* because the Respondent did not induce or encourage employees of the contractors to cease work at any place other than Appliance Park, the premises of the primary employer.

The reasoning above makes it unnecessary to determine whether the General Counsel's position conflicts with the proviso to Section 8 (b) (4) which is set out above on page 5. If, as I believe to be a fact, the unions which represent the employees of the contractors could have induced or encouraged those employees not to enter Appliance Park during the Respondent's strike, and such inducement or encouragement would have been protected by the proviso (cf. *Interborough News Co.*, 90 NLRB 2135, 2146-9; *Di Giorgio*, 87 NLRB 720, 746), it perhaps would be incongruous to hold that the Respondent could not have induced or encouraged such valid action by the other unions.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The operations of the Company constitute trade, traffic and commerce among the several States within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2 (5) of the Act.

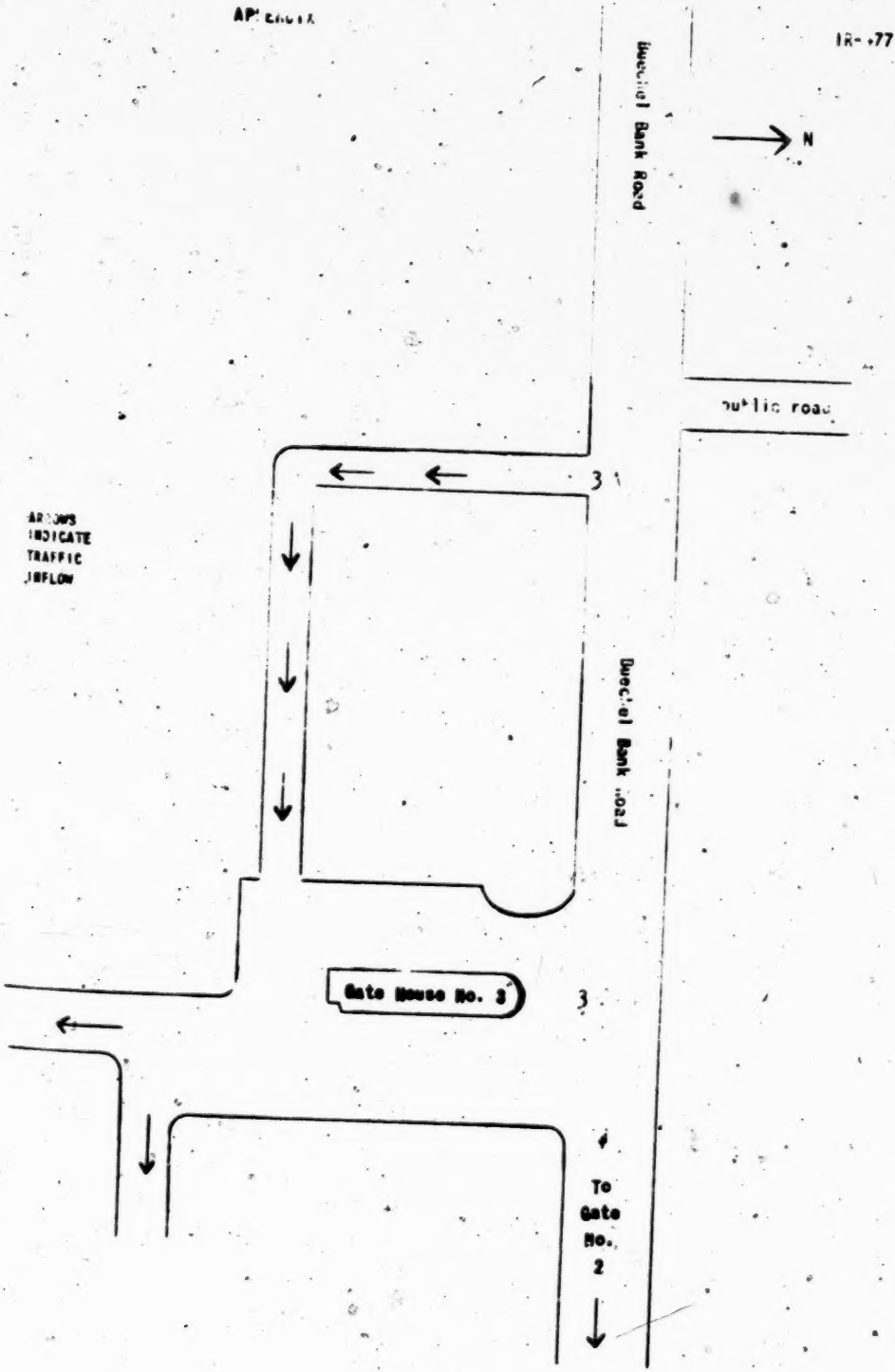
3. The allegations of the complaint that the Respondent engaged in unfair labor practices have not been sustained.

RECOMMENDATIONS

It is hereby recommended that the complaint be dismissed in its entirety.

Dated at Washington, D. C., this 30 day of December 1958.

A. BRUCE HUNT,
Trial Examiner.


Bucclel Bank Road
N
public road
ARROWS INDICATE TRAFFIC INFLOW
Bucclel Bank Road
Gate House No. 3
To Gate No. 2

Decision and Order.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

—o—

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

and

GENERAL ELECTRIC COMPANY, APPLIANCE AND TELEVISION RECEIVER DIVISION.

Case No. 9-CC-158

—o—

On December 30, 1958, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, copy of which is attached hereto, finding that the Respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter the General Counsel and General Electric Company, the Charging Party herein, filed exceptions to the Intermediate Report and supporting briefs.[1]

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings of the Trial Examiner only to the extent consistent herewith.

[1] The motion of the Charging Party that the Board grant oral argument is hereby denied, as the record, exceptions, and briefs, adequately reflect, in our opinion, the issues and positions of the parties.

The labor dispute herein occurred at the Company's "Appliance Park" plant, about "10 miles from downtown" Louisville, Kentucky, which contains 13 buildings where the Company manufactures 6 basic lines of products. Ingress and egress from the plant is limited to 5 locations, which may be termed "gates." Of the 5, only 3-A is the gate where it is contended that picketing in violation of Section 8 (b) (4) (A) of the Act occurred.[2]

At the time of the hearing on September 22, 1958, the Company employed about 10,500 employees at Appliance Park, including about 7,600 production and maintenance employees represented by the Respondent. Because of the inability of its own employees to perform all the renovating and maintenance work at Appliance Park—because its own maintenance employees lack the necessary skills and/or because there is not enough manpower available—the Company regularly contracts with various independent contractors to perform certain work at the plant, some of long-term duration. Such jobs include (1) general maintenance work, (2) installation, repair or alteration of air conditioning, ventilating, heating and electrical equipment, and (3) converting to the manufacture of new models, such as revamping manufacturing facilities, retooling, rearranging conveyors, and the installing of new facilities, equipment and presses.[3] At the time the strike was called

[2] See diagram attached as an appendix to the Intermediate Report, showing the location of gates 3 and 3-A, which are about 550 feet apart. Gate 3-A was especially established in 1953 for the exclusive use of independent contractors and their employees. The other gates are numbered 2, 3, 4.

[3] We find, in agreement with the Trial Examiner, no "ally" relationship here since the independent contractors either perform work entirely different from that of the Company's employees or such work was contracted for *prior* to the labor dispute herein. The Respondent does not contend that there is an "ally" relationship.

on July 27, 1958, the Company had contracts with 12 employers and work had actually been started by 6 employers, involving, *inter alia*, such major alterations as (a) construction of a mezzanine floor on a building, (b) building a truck dock, (c) erection of an air shelter, and (d) rearranging a conveyor line. Moreover, the Company maintained more or less permanent business relations with various of its independent contractors. One contractor, R. J. Heffernan Company, had been at Appliance Park "approximately 5 to 6 years, practically regular", employing a work force that varied from 1 to 50 men. In addition, its employees, at the time of the strike, had been working continuously at the plant for "maybe a year or two." Another independent contractor, Service Erection and Machine Company, had been "doing work from time to time" for a period of 2½ years. An employee of a third contractor, Wehr Constructors Company, had worked at the plant for "2½ years, off and on." A fourth company, Garst-Receveur, had been at Appliance Park almost continuously for over 2 years. Further, Appliance Park manufactures various products requiring model changeovers at regular periods. The record shows that the Company regularly contracts with other employers for aid in converting to new models.

On January 20, 1954, the Company issued written instructions to its guards limiting gate 3-A to independent contractors and their employees. The reason, as stated in the instructions, is that "In the event of labor difficulties with the various AF of L Craft locals this separate entrance gate for Direct Contractors' employees should also minimize the possibility of picketing our regular entrances." A company witness testified that 22 jurisdictional strikes among the craft union employees employed

by the contractors had occurred at the plant over a period of a few years. Since January 1958, a large sign has been posted at gate 3-A which reads:

GATE 3-A
FOR EMPLOYEES
OF CONTRACTORS
-ONLY-
G. E. EMPLOYEES
USE OTHER GATES

A witness testified without contradiction, and we find, that similar signs have been posted continuously at gate 3-A since 1953. In order to effectuate this rule of requiring contractors' employees to use only 3-A and its own employees to use the other gates, the Company has established a fairly elaborate identification system consisting of distinctive stickers to be attached to vehicles, which practically all employees used in coming to and going from work[4]. By these stickers, the guards are able to tell at a glance whether the correct entrance is being used. There was testimony that the guards strictly enforced this rule, requiring persons using the wrong gate to turn back and use the correct gate.[5]

[4] Also, the contractors' employees and the Company's employees were formerly required to wear identification badges, but this proved unfeasible. Company employees still carry identification cards, however. Contractors' employees who are not recognized by guards at gate 3-A are required to be checked against registration cards kept at the guardhouse for all contractors' employees.

[5] Although gate 3-A did not have a guard stationed there prior to the strike, vehicles entering there passed by gate 3, where the 2 guards at that location enforced the rule for both gates. (See diagram in Appendix of Intermediate Report.)

Contrary to the Respondent's contention, we find that the Company's employees were not permitted to, and did not, use gate 3-A during all periods material herein. In an attempt to establish such use, the Respondent called 3 Company employees as witnesses. However, 2 of the employees admittedly have not used gate 3-A since the present sign was placed there in January,

(Footnote continued on following page)

On July 27, 1958, the Respondent called a strike because of 24 unsettled grievances with the Company. Picketing occurred at all 5 gates, including gate 3-A, until August 9, when an injunction was issued by a federal district court. The strike was called off the next day. The picket signs at all gates read:

LOCAL 761
ON STRIKE
G. E. UNFAIR

The picketing was effective. Most, if not all, of the independent contractors' employees refused to cross the picket line, and did not work during the strike.[6] When some employees of independent contractors came up to the picket line, the pickets told them to "go home." When three employees of an independent contractor drove up in a car, and the driver asked the pickets if they could enter the premises, the pickets said, "no." So I asked them if I could go in and get my own personal tools and they said, "no." The driver of another car pointed to his contractors' identification sticker, but the pickets "didn't ask me anything, shook their heads, and that was all." Another employee was told by the pickets that he would have to get a pass permitting him to enter from the Respondent's office. Pickets were given written orders to take the license number of any trucks passing the picket lines. The reason therefor "was because we wanted to talk to these people and explain our side of the story."

(Footnote continued from preceding page)
1958. The third employee testified that on one occasion, July 15, 1958, he was permitted to depart by way of gate 3-A by a guard named "Happy." A lieutenant of the plant guards testified that there was no guard who was called "Happy." At best, the Respondent has shown that only 3 out of over 10,000 Company employees have ever used gate 3-A since it was established for the exclusive use of contractors' employees in 1953.

[6] About 2,000 of the Company's production and maintenance employees continued to work during the strike.

The Trial Examiner found no violation because he was of the opinion that the picketing at gate 3-A was "traditional" picketing protected by the Act. We disagree.

We find from the foregoing that only the independent contractors' employees were permitted to use gate 3-A, and that the Respondent was aware of this fact. We find also that the Respondent's object in picketing at gate 3-A was to enmesh thesa employees of the neutral employers in its dispute with the Company. Such purpose is shown not only by the picketing at gate 3-A but also by the oral appeals to the employees of neutrals not to cross the picket line.

Accordingly, in view of the foregoing, and upon the record as a whole, we find that the Respondent violated Section 8 (b) (4) (A) of the Act by inducing and encouraging the employees of independent contractors to engage in a concerted refusal to work with an object of forcing the independent contractors to cease doing business with the Company.[7]

The Effect of the Unfair Labor Practices upon Commerce

The activities of the Respondent, as set forth above, which have been found to constitute unfair labor practices, occurring in connection with the operations of the companies involved herein, have a close, intimate, and substantial relation to trade; traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[7] See *Associated General Contractors of America*, 120 NLRB No. 58, enf'd 43 LRRM 2461 (C. A. D. C.)

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from engaging in, or inducing or encouraging the employees of R. J. Heffernan Company, Service Erection and Machine Company, Wehr Constructors Company, Garst-Receveur Company, Liberty Engineering and Manufacturing Company, or Hatfield Electric Company, or any other employer, except General Electric Company, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require R. J. Heffernan Company, Service Erection and Machine Company, Wehr Constructors Company, Garst-Receveur Company, Liberty Engineering and Manufacturing Company, or Hatfield Electric Company, or any other employer or person, to cease doing business with General Electric Company.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

a. Post at its offices and meeting halls in Louisville, Kentucky, copies of the notice attached hereto as an Appendix.[8] Copies of said notice to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent be posted by it immediately upon receipt thereof, and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material;

b. Furnish to the Regional Director for the Ninth Region signed copies of the notice attached hereto as an Appendix for posting by General Electric Company, R. J. Heffernan Company, Service Erection and Machine Company, Wehr Constructors Company, Garst-Receveur Company, Liberty Engineering and Manufacturing Company, and Hatfield Electric Company, they being willing, at places where they customarily post notices to their employees.

c. Notify the Regional Director for the Ninth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. June 8, 1959.

BOYD LEEDOM, *Chairman,*
PHILIP RAY RODGERS, *Member,*
JOSEPH ALTON JENKINS, *Member.*
(SEAL) NATIONAL LABOR RELATIONS BOARD.

[8] In the event this Order is enforced by a decree of the United States Court of Appeals, the Notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

JOHN H. FANNING, MEMBER, concurring:

I concur in the foregoing decision that the picketing of Gate 3-A by the Respondent Union constituted a violation of Section 8 (b) (4) (A). In reaching this conclusion I rely principally upon the *Moore Drydock* decision, 92 NLRB 547. I am, of course, aware of the factual distinctions between that case and the instant case. As the Trial Examiner points out, picketing in the Moore Drydock case occurred at a secondary employer's premises, which harbored a ship of the primary employer. Unlike the Trial Examiner, however, I am not persuaded that these factual differences are sufficient to render inapplicable the standards for permissible picketing set forth in that case. As I read the *Moore Drydock* decision, it was the intent of the Board to establish reasonable rules permitting, on the one hand, the publication through picketing of a dispute between a union and an employer and forbidding, on the other hand, the enmeshment insofar as possible of neutral employers in controversies not their own. In my opinion, the *Moore Drydock* decision represents a commendable attempt to achieve a fair balance between dual congressional objectives. I do not believe it should, or was intended to, be restricted to a situation where the picketed premises are owned legally by the secondary employer. Applying the four principles[9] of the *Moore Drydock* case to the in-

[9] In *Moore Drydock* the Board held that picketing the premises of a secondary employer was lawful if the following conditions were met: (a) The picketing is strictly limited to times when the *situs* of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs;* (c) the picketing is limited to places reasonably close to the location of the *situs;* (d) the picketing discloses clearly that the dispute is with the primary employer.

stant case, I must conclude that the picketing at Gate 3-A, which was used exclusively by employees of neutral employers, was not reasonably close to the *situs* of the labor dispute with General Electric and that picketing at this Gate did not clearly disclose that the dispute was only with General Electric and had not been extended to the neutral employers of the employees using that Gate.

Dated, Washington, D. C., June 8, 1959.

JOHN H. FANNING, *Member,*
NATIONAL LABOR RELATIONS BOARD.

[1] **Stenographic Transcript of Testimony at Hearing of September 22, 1958.**

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
NINTH REGION

—o—

In the Matter
of
LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (AFL-CIO),
and
GENERAL ELECTRIC COMPANY, APPLIANCE AND TELEVISION RECEIVER DIVISION.

Case No. 9-CC-158.

—o—

Courtroom No. 1, U. S. Post Office Building,
Louisville, Kentucky,
Monday, September 22, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:30 o'clock a. m.

Before: A. Bruce Hunt, Esq., Trial Examiner.

Appearances:

John H. Rogers, Esq. and John H. Arbuckle, Esq., 6 East Fourth St., Room 1200, Cincinnati, Ohio, appearing on behalf of the General Counsel, National Labor Relations Board.

Herbert L. Segal, Esq., 403 Republic Building, Louisville, Kentucky; Benjamin Sigal, Esq., General Counsel, IUE

International, 1126 16th St., N. W., Washington, D. C.; and John Johnson, President, Local 761, IUE-AFL-CIO, 5153 Poplar Level Road, Louisville, Kentucky; on behalf of the Respondent.

W. L. Clay, Jr., Esq., Attorney, General Electric Company, Appliance Park, Louisville, Kentucky, on behalf of the Charging Party.

[3] PROCEEDINGS

* * *

[9] Mr. Rogers: I should like to amend the Complaint in the following regard, as to the name of two of the Employers appearing therein:

In Paragraph 3(a), I should like to amend the name of Wehr Contractors, Inc., to Wehr Constructors, Inc.;

And in Paragraph 3(c), I should like to amend the name R. J. Hefferman Electrical Contractor to R. J. Heffernan Electrical Contractor.

Trial Examiner: Spell it.

Mr. Rogers: H-e-f-f-e-r-n-a-n.

And likewise thereafter wherever those names appear in the Complaint I should like an appropriate amendment for each to reflect the proper name.

Trial Examiner: All right. I suppose there is no objection?

Mr. Segal: No objection.

Trial Examiner: I grant the motion.

* * *

[10] Mr. Rogers: This is the stipulation as discussed by General Counsel and Counsel for the Respondent:

Stipulations.

That on July 27, 1958, Local 761 called a strike of its members against General Electric Company, Appliance and Television Receiver Division, at Appliance Park, in Louisville, Kentucky, and pursuant to said strike picketing occurred at all [11] of the gates of the Employer's premises, including a gate designated and known as Gate 3-A, from July 27, 1958 to August 9, 1958, at about 1:30 p. m., when pickets were removed from Gate 3-A only pursuant to a temporary restraining order issued by the United States District Court for the Western District of Kentucky.

Thereafter, on August 10, 1958, at about 9:00 p. m., Local 761 called off the strike and all picketing ceased.

Mr. Segal: It is so stipulated.

Trial Examiner: All right, is there agreement on behalf of the Company?

Mr. Clay: Yes, sir.

Trial Examiner: I ask if you gentlemen are also in agreement that the Respondent Local has majority status in an appropriate unit at the local plant of the Company?

Mr. Rogers: It is so stipulated.

Mr. Segal: It is so stipulated.

Mr. Clay: It is stipulated.

Trial Examiner: Are you in agreement that the strike was an economic strike, as distinguished from an unfair labor practice strike, or do we have no issue on the point?

Mr. Rogers: I think there is no issue on the point, Mr. Trial Examiner.

I would also stipulate that Local 761, IUE, the Respondent Union herein, is the certified bargaining agent for the [12] production and maintenance employees of the Employer, the Charging Party, at its location in Louisville, Kentucky.

Trial Examiner: Well, that is an elaboration of the earlier statement, of course, that they have a majority status.

Mr. Rogers: Yes.

Trial Examiner: All right.

• • •

[13] Trial Examiner: Mr. Rogers, what are the numbers on the other gates?

[14] Mr. Rogers: The numbers of the other gates are 2, 3, 4 and 5.

• • •

[17] Trial Examiner: If I understand correctly, if the contractors and their employees used the same gates as General Electric employees, and anyone else who visited the plant, there would be no unfair labor practice?

Mr. Rogers: That is the understanding of the General Counsel. This Complaint is based upon the distinction.

• • •

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[23] LESTER H. MEANS a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

• • •

[26] Direct Examination:

Q. (By Mr. Rogers) • • •

Q. In what capacity are you employed by this Company? A. I am Manager of Relations and Utilities Department in Appliance Park.

Q. That's in Louisville? A. In Louisville, sir.

Q. How long have you held that position? A. A little over a year; since July 1, 1957.

Q. And prior to that time what position, if any, did you hold? [27] A. I was manager of Employee and Community Relations at Appliance Park.

Q. And how long did you hold that position? A. For about five years, sir.

Q. And prior to that time how long had you been employed with General Electric Company? A. I have had a total of a little more than 35 years of service with the General Electric Company, a good deal of it at Schenectady, New York, and part of it with the Employee Community Labor Relations Group in New York City.

* * *

[28] Q. (By Mr. Rogers) Mr. Means, in your capacity as Manager of Relations and Utilities Department, do your duties in any way bring you in contact with plant protection? And, if so, in what way? A. Yes, one of the other sections is the utilities section that has to do with, and has the responsibility for plant protection.

* * *

[29] Q. Would you describe those premises, briefly? A. Briefly, we have a plot of land that contains approximately 1,000 acres, almost a square plot, about 10 miles south and east of the center of Louisville. That is what we have developed into what is known as Appliance Park. We have six large major manufacturing buildings, a large warehouse, and other buildings, a total of 13 buildings.

Q. Now, will you state for the record how entrance is gained [30] into Appliance Park, by what means? A. We have some main gates, as we call them, although we do not

have a fence around the property we have a big, large drainage ditch around the property which we feel gives us the necessary protection. There are gates 2, 3, 3-A, 4, and 5. Employees come in, by and large, through gates 2 and 5, which enter into a large, paved parking lot of some 65 acres.

Q. Will you state, for the record, what, if any, duties do the guards have with regard to these gates? A. The guards' responsibilities, in brief, are to direct traffic and see that only authorized persons enter the gates, that they enter the proper gates according to their designated places of employment; that they stop those who are not employees; that they look after visitors and direct them. In addition, of course, there is a fire protection responsibility.

* * *

Q. (By Mr. Rogers) Now, Mr. Means, I hand you a document which has been marked for identification as General Counsel's Exhibit Number 3, and ask you to state what that is. A. This is a reduced-scale plot plan of Appliance Park. I see it has been prepared by one of our designers. It indicates the locations of the various buildings, the entrances, the roadways surrounding the Park, the parking lots, [31] and things of that kind.

* * *

[34] Q. I will show you the photograph which has been introduced into evidence as General Counsel's Exhibit Number 2; and call your attention therein to a sign reading, "Gate Number 3-A. For Employees of contractors only. G. E. Employees use other gates."

Now, will you state for the record how long that sign has been there? A. That sign, or one similar to it, desig-

nating this as Gate 3-A for contractors and contractors' employees only, has been there since that entrance was made sometime in 1953.

[35] Q. Continuously? A. Yes, sir.

Q. Mr. Means, will you state whether or not there are any methods or means provided by General Electric to identify persons attempting to gain entrance to Appliance Park? A. Oh, yes.

Q. What means do you use? A. All employees who drive to work are issued an identification sticker for their car, a decal which they are told to attach to their windshield, and the type of decal, the color of it, the size, shape of it, determines where they may park and the entrances they may use.

All employees are issued an identification card. Visitors are issued an identification card which they stick in their coat pocket (indicating). Visiting employees are issued a—that is, employees from another plant, are issued a different color sticker, or card, that goes in their lapel pocket.

Contractors, their employees, are issued a temporary sticker rather than a decal for their windshield, something that is attached by a suction cup to their windshield; so that everyone who enters Appliance Park is identified in some way, we hope.

Q. Now, will you state for the record whether or not General Electric at any time has reduced this sticker system about which you have just testified—have they reduced that to writing in any way? [36] A. Oh, yes, it has been reduced to writing, back over some years.

Mr. Rogers: Will you please mark this for identification as General Counsel's Exhibit 4.

(Thereupon, the document referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Rogers) I hand you a document consisting of four pages of mimeographed material, held together by a staple, bearing the date of May 29, 1957, and ask you to state what that is. A. This is an instruction or memorandum of information sent to two of the major mailing lists of supervisors in Appliance Park, concerning the identification, the windshield sticker identification for employees' cars.

I have here in my briefcase the copy of this that I received through the mail as a result of this being sent out.

Q. Will you state for the record whether or not the information contained in General Counsel's Exhibit Number 4 is an accurate reflection of the windshield sticker identification system presently in effect? A. It is.

• • •

[38] Q. (By Mr. Rogers) Mr. Means, with regard to the language pointed out by the Trial Examiner, will you explain for us what Gatehouse Number 3 is, and where it is located? A. Gatehouse Number 3 serves both Gates 3 and 3-A, in order to save some money. You might call it like a fork in the road where Gate 3, the employees and any trucks coming in that gate would stop at that gatehouse. Down the road about 100 yards is Gate 3-A, and, as designated on this plot plan, those who enter [39] Gate 3-A come past this same gatehouse. There are two guards at that gatehouse at all times, and they, of course, watch both entrances.

• • •

Q. (By Mr. Rogers) Now, Mr. Means, during the period of time you have been employed as Manager of Rela-

tions and Utilities Department, what policy, if any, and practice, if any, does the Company have with regard to the use of Gate 3-A? A. That has been exclusively for the use of contractors and employees of contractors.

Q. What, specifically, is the Employer's policy with regard to that gate and the use of it by employees of General Electric? A. Employees would be stopped and would be turned back, and [40] have been, because I have checked that with our guards and our chief of plant protection.

Mr. Segal: I object to that. It is hearsay. He doesn't know of his own personal knowledge. I move it be stricken from the record.

Trial Examiner: Strike out the words "Because I have checked that," and subsequent words in the answer.

• • •

[42] Q. (By Mr. Rogers) All right, Mr. Means, with regard to your duties as Manager of Relations and Utilities Department, what, if any, function do you perform with regard to independent contractors and their contracts? A. I have a responsibility for one of the departments in Appliance Park, and we enter into contracts with contractors for all of the things that involve the buildings outside of the six major manufacturing buildings, including the grounds, the parking lots, and all of those facilities, so that any contracts that involve any of the 13 buildings outside of the 6 major manufacturing buildings would come under my jurisdiction.

Q. Now, in what manner are any such contracts with independent contractors negotiated, on what basis? A. Our engineers would probably draw up the specifications, plans, what not, and through our purchasing section would

submit these to three or more competent contractors who would bid on the jobs, and the job would be let to a contractor as the result of [43] these bids.

Q. Now, let me ask you, with regard to any of these contracts with independent contractors, does your authority and responsibility relate only to the Relations and Utilities Department, or does it extend further than that at any time? A. From time to time one of the six operating departments might ask us to handle a contract for them, and so we have handled some major contracts with them involving conveyors, air conditioning, ventilating, or heating or electrical work. That is on request from the manager of that department.

Q. And can you state for the record, in general, what type of work is let out to independent contractors? A. Quite a variety of work. We have a large maintenance group of our own that does the routine day-in-and-day-out type of maintenance; but our appliance business is very much like the automobile business, every year we bring out a new model. Some departments bring that new model out in the summer; most of them in the fall; about August or September; so that we have a job of retooling, revamping our manufacturing facilities, installing new facilities, equipment, rearranging conveyors, and some of those major operations of that kind, maybe making a new foundation, installing a new press or series of presses, a major change in our conveyor system, a major change in our lighting, some of those things for which we do not have either the skill or the manpower, or the heavy machinery, perhaps, [44] necessary to perform the job.

We refinished a parking lot not long ago. We never do that kind of paving ourselves.

L. H. Means, for General Counsel, Direct.

Q. Now, with regard to contracts let to independent contractors, if any, by any of the other departments, or for any of the other departments, will you state for the record whether or not the Relations and Utilities Department lets all contracts wtih independent contractors for all of the departments at General Electric? A. Oh, no, that's the responsibility of each operating department. We would only do it at their request.

Mr. Rogers: That's all.

Mr. Clay: May I ask a few questions?

Trial Examiner: Yes.

DIRECT EXAMINATION

Q. (By Mr. Clay) Mr. Means, how far from Louisville is Appliance Park? A. It is approximately 10 miles from down town Louisville.

Q. How do the employees and contractor personnel go to Appliance Park? A. Ninety-nine percent in their own personal car or in somebody else's car. They drive. There is bus service, but very few employees ride the bus. No one walks.

Q. Just for the record, would you list briefly the types of appliances, products, made at Appliance Park? A. Building 1 makes washers and driers, and a combination [45] washer and drier; Building 2 makes ranges; Building 3, dishwashers and Disposalls; Buildings 4 and 5 make the household refrigerators and freezers; and Building 6 makes the room air conditioners.

• • •

CROSS EXAMINATION:

Q. (By Mr. Segal) Mr. Means, there is no question in your mind but that a strike situation is not a normal situation at General Electric, Appliance Park, is that correct, sir? A. Yes, that's correct.

* * *

[46] Q. Now, the strike not being a normal situation. did the employees who came to work do any of the work in this maintenance area, or do any of this maintenance work, those that went [47] to work during the strike? A. We had maintenance employees who came to work who did maintenance work.

Q. And they are G. E. employees? A. Yes.

Q. Now, you introduced some exhibits; I think they were tendered and finally accepted. First of all, directing your attention to Number 3, the map, the actual map itself refers to these gates that we are talking about here as B and C, is that correct? A. Yes.

Q. B there is Gate 3, C is 3-A. * * *

[52] Q. (By Mr. Segal) Now, Mr. Means, this document was sent out, I assume, over the signature of H. J. Benzie, is that correct, sir? A. That's correct, yes.

Q. To whom did this document go? A. That went to a large portion of the supervisors. That went to an L-1 mailing list, through L 8.

Q. Tell us— A. That meant it went to, I believe, all exempt employees of Appliance Park.

Q. All exempt employees? What does that term mean? A. That means all supervisors—

Q. Oh, I see, I see. So the document went to super-

visors, [53] not employees of—production and maintenance employees? A. That is correct.

• • •

[56] FURTHER DIRECT EXAMINATION

Q. (By Mr. Rogers) Mr. Means, I show you a document which has been marked for identification as General Counsel's Exhibit 5, and I ask you to state what that is. A. This is a plant protection bulletin, Number 9, issued January 20, 1954, signed by E. W. Ernst, Appliance Park Project, who had responsibilities in connection with plant protection at that time. This relates to the use of Gate 3-A by contractors and contractors' personnel. This was issued and sent to a long list of supervisors whose names appear at the heading.

• • •

[57] CROSS EXAMINATION (Resumed):

Q. (By Mr. Segal) Now, this last document which has been introduced by General Counsel, the Bulletin of January 20, 1954, was not distributed to the employees of General Electric, is that correct, sir? A. It was not, not to all employees, but distributed to—

Q. To your supervisors? A. Yes.

Q. Now, there is no place contained in that document that General Electric employees shall not use Gate 3-A? A. I can't say without reading it in detail. This was not aimed at that purpose, I agree.

• • •

[58] Q. Well, I call your attention, therefore, again to General Counsel's Exhibit Number 4, where no difference

is made between Gate 3. In other words, there is no breakdown between Gates 3 and 3-A, whereas in your document of January 20, 1954, apparently Gate 3-A is specifically designated. A. The confusion, I think, in your mind, Mr. Segal, comes from— This reference is to Gatehouse Number 3, not Gate Number 3. There is a gatehouse that serves two gates.

Q. Yes, I appreciate that, sir, but I call your attention to the next page of General Counsel's Exhibit Number 4, which sets out the gates by name—or by number—I am sorry, it is page number 3—as Gates 2, 3, 4 and 5, with no breakdown of Gate 3 into 3 and 3-A. Is that correct, sir? There is no breakdown? A. It doesn't mention 3-A there, because this was directed to employees, not to contractors. This was telling employees what gates they should use.

Trial Examiner: You mean supervisors?

The Witness: No, all employees. This went to supervisors, but the reason we did not mention 3-A here is that this had to do with the decal system we put on the windshields.

• • •

[59] Trial Examiner: Did you say just a moment ago that this document was also distributed to production and maintenance employees?

The Witness: Oh, no, none of these have been distributed to them.

• • •

Q. (By Mr. Segal) Now, directing your attention back to your affidavit of August 5, 1958—the last page, if you have it—you say, "Persons employed by contractors and their sub-contractors at the plant are required to have

identification badges which they are required to wear." Do you see that, sir, in the second paragraph? A. Yes.

Q. Now, that is not a true statement, is it? A. To the best of my knowledge it is.

Q. Do you recall Mr. Gatton testifying that the badge system had been abandoned? A. So far as employees are concerned, that is correct.

• • •

[60] Q. Actually, isn't the identification card the employees carry, isn't that for the employees' store? A. That's only one of the purposes; but any person that we see on our premises that we do not know, we ask him to identify himself. If he is an employee he has an identification card.

Trial Examiner: How many employees are there?

The Witness: Ten thousand, five hundred, at the moment.

• • •

[62] Q. (By Mr. Segal) Mr. Means, you told us that there was a [63] large drainage ditch that surrounds the plant; is that correct? A. That's right.

Q. Now, there is no fence, as such, surrounding the—what is it, 1,000 acres? A. One thousand acres.

Q. And this drainage ditch doesn't have water in it unless you have a great, great rain, or something of that sort, is that right? A. From time to time it has water. See, that ground out there is very flat. We had to make this drainage ditch in order to drain the property.

Q. In any event, someone can cross on foot, that's what I am trying to say. A. Yes; they can't drive on it, but they could walk.

• • •

[64] Q. (By Mr. Segal) Now, these two bulletins that we have referred to, were they posted on any employee bulletin board? A. No, but they were used as subject for informative meetings, that's why they were distributed so widely to supervisors.

• • •

Q. You know that you got copies. Now, directing your attention [65] to the plants themselves, there are, what, five, six buildings? A. Six manufacturing buildings; a total of 13.

Q. And these contractors, for the most part, the majority of their work—that you said were left, and who are involved here, were contracted to do business and to do their work in the plant, in the plant proper, is that correct, sir? A. A majority of it, but not all of it.

• • •

[66] Q. (By Mr. Segal) Now, Mr. Means, this work that was done, or was to be done, did this encompass all the buildings in the plant—or all the buildings on the site, I mean by that buildings, or plants 1 through 6? A. I can't say that every building had something to do, but most of them did.

• • •

Q. So that contracting employees moving through the gate would park—he would park his car—I am assuming they are all males—and then they would go into the respective buildings in which they were supposed to work? A. Yes, they parked back of the buildings as I designated them.

Q. Now, during the strike—I mean by that when the

picketing was going on—the production and maintenance people were on strike, there were some employees, production and maintenance employees who did not respect the picket line, is that correct, sir? A. Yes; over 2,000 of them.

[67] Q. Yes; and these people also worked—accepting, just for the sake of the question, the number—also worked in these respective buildings; is that correct, sir? A. Yes.

* * *

Trial Examiner: What is that?

The Witness: There were no contractors in during the strike. They wouldn't cross the picket line at Gate 3-A.

Q. (By Mr. Segal) But the question was, they were working in the same general area that the contractors, or those employees would have worked, is that correct? A. Oh, yes, yes.

* * *

Q. Can you tell us, sir, whether or not in Building Number 2 [68] the painters went in and did their work? Do you know that to be a fact, or not to be a fact? A. I do not know.

Q. You just don't know? A. I don't know.

Q. Now, there is no permanent building for the contractors on the premises, is there? A. No.

Q. Did you keep any record of how many employees, or how many contracting employees went through Gate 3-A? A. During the strike?

Q. Yes, sir. During this period that we are talking about. A. During the period of the strike, to the best of my knowledge, none.

Q. You are saying that no cars at all went through Gate 3-A, is that what you are telling us? A. I heard some testimony in Federal Court the other day that the pickets have passed one or two cars to come in to pick up their tools, but did not pass people to come in and work.

Q. In other words, your testimony is that except for these one or two cars that's all the cars that went through 3-A, is that right? A. As far as I know.

Q. As far as you know; all right.

How close is the gate designated by you as 3-A to Gate Number [69] 3, if you know? A. Oh, a couple of hundred feet, roughly.

Q. Pardon, sir? A. Roughly, I would say. Four hundred feet.

Trial Examiner: Let me see that.

The Witness: See, these are marked (indicating). Here is 2200, 450-500 feet.

Trial Examiner: This cross (indicating) is the point? This cross?

The Witness: Yes.

Trial Examiner: All right, then, that would be about 1750.

The Witness: About 650 feet. About 550. It is 550.

Trial Examiner: All right, it is 550 feet, approximately.

• • •

[70] Q. Directing your attention to the contractor's employees and their cars, it is conceivable that more than one could be in a car, that they could have four or five, a group, riding together? A. Oh, yes.

Q. So that when that contractor's employees' car goes

in he could let individuals off at places closest to their work station? A. Oh, yes.

Q. And, of course, contained in the contracting employees' car could be General Electric employees, isn't that true? It is possible, isn't it? A. It is possible to smuggle one in.

• • •

[71] RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) • • •

[72] Trial Examiner: Mr. Segal, you do not contend that there are any entrances other than Gates, 2, 3, 3-A, 4 and 5, and you do not contend that any vehicle can get in that property, any automobile can get in that property by any other entrance or any other means?

Mr. Segal: Just one second; Mr. Johnson wants to explain something to me.

I think your statement, sir, is generally correct about the automobiles. I am informed there is a gate in back of what is known as Fegenbush Lane, which I think it is identified there, which now has a log lying in front of it, and I don't think it is generally in use any more, but subject to that reservation [73] the statement is correct as to the automobiles.

• • •

Q. (By Mr. Rogers) Now, Mr. Means, with regard to the drainage ditch which surrounds Appliance Park, would you briefly describe it as to width and depth? A. It varies as to width and depth, but in places it is 25 to 30 feet wide, and as much as 6 or 8 feet deep.

• • •

RE-DIRECT EXAMINATION:

* * *

[74] Q. (By Mr. Clay) Mr. Means, did you hold any informative meetings, or attend any informative meetings when bulletins of this kind were discussed with the employees? A. Yes, sir. I have held them myself, and I have attended some. Traditionally—One of my responsibilities is communications with employees, and all—

Trial Examiner: You have answered the question.

Q. (By Mr. Clay) Are the contents of such bulletins communicated by the supervisors to those attending such meetings? A. Generally, yes.

Q. Mr. Means, reference is also made by the attorney for the Union with respect to a paragraph in General Counsel's Exhibit Number 4 relating to Gate 3-A, and I think you quoted a sentence reading, "In the event of labor difficulties with the various A. F. of L. Craft locals this separate entrance gate for direct contractors' employees should also minimize the possibility of picketing our regular entrances, Gates 2, 3, and 5 used by G. E. [75] employees."

Since you have been at Appliance Park have there been jurisdictional strikes by unions representing contractor personnel? A. There have been a total of 22. That is why we established Gate 3-A.

Q. And I take it from what you said that the need for that gate was felt? A. It was; early in the days of Appliance Park the contractors came in the same gate as our employees; and on some of these jurisdictional disputes they set up pickets that kept our employees out as well

as employees of the contractors, so we established a separate gate for contractors.

Q. Did you also feel that it was important that these gates be used only by those for whom they were designated? A. Very important. That's the reason we did it.

* * *

[83] Trial Examiner: * * *

I have before me what appears to be the transcript in Civil Number 3665, entitled Fraker against Local Number 761, the Respondent in the case today. The date of the proceedings is September 18, 1958, and they occurred in the local United States District Court.

Among the witnesses testifying were Arnold Tupuritis, Benjamin Charles Johnson, Richard J. Long, James S. Mapier, and James F. Wilson.

I understand that counsel stipulate now that if the five individuals I named were called as witnesses in this proceeding and were asked the same questions as were asked of them in Civil Number 3665, that they would give the same answers as they gave in that proceeding.

Is that a correct statement of the stipulation insofar as I have stated it?

Mr. Rogers: Mr. Trial Examiner, with the exception that [84] the one witness' name, although it appears as "Long," his name is really Richard J. Lang, your statement is correct.

Trial Examiner: With the modification stated by Mr. Rogers, is the stipulation agreeable?

Mr. Segal: It is agreeable.

* * *

[85] Trial Examiner: • • •

Among the other witnesses in Civil Number 3665, there are two persons named John Gatton and Sylvester D. Comstock. I understand that counsel enter into the same stipulation with respect to the testimony of Mr. Gatton and Mr. Comstock with the proviso that anybody here may call Mr. Gatton or [86] Mr. Comstock or both for further testimony in this proceeding.

Is that a correct statement?

Mr. Rogers: Yes, sir.

Mr. Clay: Yes, sir.

Mr. Segal: That's correct.

• • •

[88] (The testimony of John Gatton, Arnold Tupuritis, Sylvester D. Comstock, Benjamin Chas. Johnson, Richard J. Long, James S. Napier and James F. Wilson, as follows, is copied from transcript in Civil Action Number 3665, United States District Court, Western District of Kentucky at Louisville, per stipulation hereinbefore recited.)

JOHN GATTON was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Schurre) Mr. Gatton, are you employed by General Electric? A. I am.

Q. What position do you occupy? A. I am Lieutenant, Plant Protection, I am a shift supervisor.

Q. How long have you held that position? A. Since July, '54.

• • •

[89] Q. Will you state what instructions you have received concerning the use of those gates? A. We have informative bulletins that we issue from time to time that cover the use of the gates, what entrances certain people can use for different things, the guards are briefed on those points. If they are assigned to a particular post regularly, they are briefed in detail concerning that post. In addition, all are given copies of bulletins or anything to go into a manual that they have.

Q. I show you Petitioner's Exhibit 2 and ask you if you and the force of guards received that circular or bulletin? A. Yes, sir, we did.

Q. Are guards stationed at all gates at all times? A. The guards are stationed so they can control traffic at all gates whenever they are open. I might add that we close certain gates at certain times.

[90] Q. What instructions have you received particularly with respect to the use of Gate 3-A? A. Gate 3-A was set up and was used solely by contractor personnel.

Q. How do you insure that G. E. employees can't enter or don't enter that particular gate? A. The contractor employees are issued a certain type sticker that can be recognized from a reasonable distance, as contractors.

Q. Do you mean a sticker for their automobile? A. Yes, sir, in addition to that, if the guard doesn't recognize the individual as having come in previously as a contractor employee, he is stopped and questioned on that point.

Q. Has the company issued various types of stickers

and badges to be used by employees as well as contractor employees? A. They have, sir.

Q. Do you have them here? A. Yes, sir.

Q. Will you take from that the various stickers and badges and briefly describe them after showing them to the Court and counsel for the respondent, how they are used? A. We have two main type stickers, basic types. One is a plastic suction cup used by the contractor personnel, and the [91] other is a decalamania type. The white plastic suction cup type is used by the contractor employees or hourly employees. The red plastic suction cup type is used by contractor supervision. The difference is the contractor supervision will have certain roving privileges from one building to another, outside the contractor parking lot.

The white plastic suction cup restricts that man to the contractor lot and nowheres else.

On the employees, General Electric employees type sticker, the white sticker states on there to be used for Gates 2 and 5. It is a plain white decal, it is placed on the windshield.

The utility building parking sticker is a white decal with a blue triangle, and it grants the privilege of using Gates 2, 3, 4 and 5.

In addition to that, we have what we call an unrestricted sticker, which permits using Gates 2, 3, 4 and 5, and also the privilege of parking adjacent to the manufacturing building. The first two are not permitted to park adjacent to the manufacturing building.

Q. What about badges, are they issued to be worn by contractor employees or G. E. employees? A. We tried the badge system out, and we found it was impractical.

* * *

[92] Q. Without going into that, the system of identification that has been current is the sticker system? A. Yes, sir.

Q. Does the guard group keep certain records and files with respect to incidents that may occur at any of these gates? A. Yes, sir, an indice file is kept.

Q. Do you have a registry of contractors who were working at Appliance Park? A. Yes, sir, we have a registration system. We have a card that is filled out by the employees in the presence of a guard on the gate.

Q. The contractor's employees? A. Yes, sir, that states the make, and the model of the vehicle they are driving, whose name it is registered in, and the sticker is issued to that vehicle.

Q. Have you received any reports of any employee of General Electric trying to use Gate 3-A to enter the Park?

* * *

[93] The Witness: Yes, sir.

Q. How do these reports come to you? A. As mentioned before, I maintain what we call an indices file, and I receive reports from time to time of any incidence like that.

Q. Are they recorded? A. It depends—if it is an offense where an individual attempts to go ahead and use a particular gate when he is requested not to, then a report is made on it. However, if an employee, through ignorance, if nothing else, attempts to use a gate, the reasons for that are pointed out and we found we get awful good cooperation from explaining why we have that rule.

Q. This explanation is made when, after he entered, or when? A. No, sir, if he is attempting to enter, he is not permitted to enter a gate that he is not authorized to use.

J. Gatton, for General Counsel, Cross.

Q. During the strike, were you present at Gate 3-A at any time? A. Periodically I was present at Gate 3-A.

Q. Were you there on the first day of the strike? A. Yes, sir.

Q. July 28th? A. Yes, sir.

Q. Were you at Gate 3-A? [94] A. Yes, sir, I visited Gate 3-A.

Q. Will you describe how many pickets were there and what they were doing? A. On Monday, July 28th, there varied between 25 and 29 pickets throughout the morning hours of that day. There were two signs, two picket signs.

Q. I show you Petitioner's Exhibit 1, and ask you if this is the sign that was carried? A. I would say it was a sign similar to that, I couldn't say that is the sign, I would say it was one similar to that.

* * *

[95] CROSS EXAMINATION

Q. (By Mr. Sigal) * * *

[96] Q. Now, you go through Gate 3-A, don't you? A. No, sir.

Q. You do not. A. Only time I go through Gate 3-A is like we have a washout or the road is damaged, on an inspection tour only. No other time do I use Gate 3-A.

Q. You would say that in emergency you would go through Gate 3-A? A. Using the official car, yes, but that would be the only [97] reason I would.

Q. Would you say there are not emergencies when other officials of G. E. would go through Gate 3-A? A. They would not, they would be stopped.

Q. Officials would be stopped? A. Yes, sir.

J. Gatton, for General Counsel, Cross.

Q. Mr. Means wanted to go through Gate 3-A, he could not go through? A. No, sir.

Q. Is that in your instruction? A. Yes, sir.

* * *

[98] Q. Now, with regard to the sticker which is used by the contractor's employees, where is this sticker placed on the car on which this is used? A. We recommend placing it on the windshield immediately in front of the rearview mirror,—in other words, between the windshield and the rearview mirror.

Q. Is that for the convenience of the guard? A. Yes, sir.

* * *

[99] Q. All right, now, when the car passes down this gateway entrance, where does it go? A. It goes past Gatehouse number 3. That is the location where the guard is stationed regularly during normal periods, Gate 3, Gatehouse 3.

Q. How far is that from the entrance? A. From Gate 3-A entrance?

Q. Yes. A. Approximately 350 feet.

* * *

Q. Well, all right, give us his itinerary when he enters the gate? A. All right, he enters the gate. The guard located adjacent to the Gatehouse number 3 checks the individual to make sure he is a legitimate holder of the contractor sticker, and after a time they recognize any number of them as regular contractor employee.

Q. He checks the driver of the car? A. And his passengers. In other words, each individual, when they come in like that, generally the supervisor of that company will

notify the guard on the gate, either through plant engineering or through the plant protection office, [100] that there will be so many men in. We don't necessarily know their names to begin with. Then, when they arrive there, they are registered in, whether they are riders or passengers in the automobile, or whether they are the driver. They are registered in on a card.

Q. On whose card? A. On our card.

Q. Well, now, there is no obligation for a driver of a car to have the same passengers every day, is there? A. No, sir, but if they are not recognized as *bona fide* contractor employees, they are not permitted to enter.

* * *

[101] Q. Now, so far as any particular person in a car is concerned that is not the driver, if he says to the guard that he is an employee of the contractor, that ends the conversation, doesn't it? A. No, sir, if the guard is not sure, he checks the registration card.

Q. After he has identified the person. A. Yes, sir.

Q. And you say this would require some days, would it not, before a guard would be able to recognize the people who are in the cars as being regular employees of a contractor? A. Not necessarily. Most of our contractor employees have been around there for some time. They work for the same companies, and you grow to recognize them on sight.

Q. After a time? A. Yes, sir.

Q. After the first day of the strike, July 28th of this year, how many pickets were located at Gate 3-A? A. Three, three pickets were located there.

Q. And was that the same every day thereafter during

the continuation of the strike? A. Other than when they would be relieved, and sometimes if they were relieving, there would be four there for a short period. Basically, there were three pickets there.

* * *

[102] Q. I see. After—beginning July 29th, there were three pickets at every gate? A. Yes, sir.

* * *

Q. I am asking this, Mr. Gatton, was the picketing at Gate 3-A any different in any respect from the picketing at any of the other gates? A. No, other than the point I mentioned.

* * *

[103] RE-DIRECT EXAMINATION

Q. (By Mr. Schurre) Were you at Gate 3-A at any time during the picketing when contractors attempted to enter through Gate 3-A? A. On August 6th, I was at Gate 3-A when—

Q. Will you state what happened? A. Well, there were three cars, I happened to be down there, I didn't know they were even there until they was already through. They caught the pickets when they were off to the side, and the three carloads of Kirchdorfer and Howell employees came through the gate.

Q. Was that the only occasion you happened to be present when contractors attempted to enter? A. Yes, sir. * * *

[104] Q. When entering Gate 3-A, does the car have to pass the guardhouse? A. Yes, sir.

Q. Little brick guardhouse which is in back of Gate 3?

Is that right? A. It is at the intersection of Gate 3-A and Gate 3.

• • •

Q. Is it possible for a G. E. employee or official to enter Gate 3-A and proceed into the plant? A. You mean legitimately?

Q. Yes. A. No.

Q. They would be stopped? A. They would be stopped.

Q. And turned back? [105] A. Yes, sir.

Q. Has that been done to your personal knowledge? A. Any number of times, yes, sir. Plant engineering employees have been turned around.

• • •

EXAMINATION by the Court:

• • •

Q. What are these gates a part of, a fence or barrier that mark off the thousand acres or the sixty-five acre parking lot, or what? A. We have large drainage ditches that encircle the park. Where these gates are located, we have large culverts which have the pavement over the top. In other words, it would be very difficult for a vehicle to obtain access to the park due to these large drainage ditches that you could set a vehicle down into and still couldn't see the top of. So, at the gates we have the culvert and the pavement.

• • •

[106] Q. Well, there is no barrier or fence to keep people from going on it anywhere? A. No, sir, that's the reason we have our patrols.

Q. They patrol the boundary? A. They patrol throughout the plant site.

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[107] ARNOLD TUPURITIS was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

Direct Examination:

[108] Q. (By Mr. Schurre) * * * Will you state your occupation? A. I am a carpenter.

Q. And by whom are you employed? A. Wehr Construction Company.

* * *

Q. Were you assigned to work at Appliance Park some time before July 28th? A. Yes, I worked two days before, Thursday and a Friday before July 28th.

Q. Were any other employees of Wehr with you? A. Two laborers.

[109] Q. Two laborers. What are their names? A. One is Lonie—I don't know his other name.

Q. Would you say it was Terry? A. Yes.

Q. Lonnie Terry? A. Yes.

Q. And one other. You know his name? A. No, I don't know that.

Q. You know whether they are union members? A. Yeah, I suppose so.

Q. Now, did you go back to work there at Appliance Park on July 28th? A. Yeah, Monday morning.

Q. Were you alone? A. No, had two laborers with me.

Q. Had two laborers with you. A. Yes, sir.

Q. Was it your car you were driving? A. Yes, my car.

* * *

Q. Was this car you used on that occasion, did it carry a [110] sticker? A. Yes, sir.

Q. The kind that was described in court this morning? A. Yes, contractor sticker.

Q. What time of morning did you arrive at Gate 3-A? A. It was around seven o'clock in the morning.

Q. Will you describe what you saw and what happened? A. I pulled up to the Gate 3 and tried to turn in.

Q. Gate 3? A. Gate 3-A, contractor's entrance, and there was a solid crowd of people out there. So, I pointed at the sticker, thought the contractor sticker would let me go in, the boys didn't ask me anything, shook their heads, and that was all.

Q. Shook their head? A. Shook their head, like no. Of course, I wouldn't drive—there was a big crowd of people, and there was a policeman on the road, and he told me to move ahead, don't stop the traffic. So, I kept going ahead.

Q. And you didn't enter the plant that day to do any work? A. I couldn't do that.

Q. Did you go back there? To finish the work you were doing? A. No, I called up the company and they told me to go down to the project on Greenwood Road, school job.

Q. Did you and your co-workers, laborers, go back to work out there after the pickets ceased at Gate 3-A? [111] A. Yes, I took them along with me.

Q. Did you go back to work after the pickets stopped? A. No, I wasn't there.

Q. You have been working on some other job? A. Yes.

Q. Approximately how many people were around that Gate 3-A that morning? A. Oh, I couldn't say for sure, but approximately around thirty, probably.

Q. Would you say you couldn't drive through without hitting them? A. No, I could not.

• • •

CROSS EXAMINATION:

Q. (By Mr. Sigal) Mr. Tupuritis, did you go back to the plant on July 29th? To see if you could get in. A. No, I got my orders from my superiors, and they didn't tell me to go back.

Q. You have never gone back there? A. No.

• • •

SYLVESTER D. COMSTOCK was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as [112] follows:

Direct Examination:

Q. (By Mr. Schurre) • • •

Q. What is your occupation? A. I am an electricia.

Q. By whom are you employed? A. By the R. J. Heffernan firm.

• • •

Q. Did Heffernan have any work to do for General Electric at its Appliance Park plant, around July 28th? [113] A. Yes, sir.

Q. Were you assigned to perform any of that work? A. I was.

Q. When had that work commenced? A. That work, that phase of the work started approximately last October.

Q. 1957? A. Yes, sir.

Q. Will you describe the kind of work your firm was doing? A. Well, this is something new. This is the second kind of a job, of its kind, that has ever been built, and the first one isn't even completed yet. That is being installed in the Navy Yards in Washington. This is called the Stromberg system. This deals with the cables and it is kind of intercommunicating on time cards or punch cards, that records what the men have done on the various presses and things. At the same time, we were also completing what is known as the Hancock system.

Q. Is that an electrical system, too? A. Yes, sir.

Q. Are they both rather complicated? A. Yes, sir.

Q. Require special skills? A. Yes, sir.

Q. Over how long a period of time has Heffernan Company been engaged in doing work at Appliance Park? [114] A. We have been at Appliance Park approximately five to six years, practically regular.

Q. You had a work force there almost continually? A. Yes, practically, maybe off a day here and there.

Q. How big was that work force? A. Well, we had anywhere from one man on up to fifty men there, from various times.

Q. Under your current contract with G. E., for how long a period in the future does Heffernan expect to be engaged in work at the plant? A. Well, this system I am installing now, the main parts of it won't be delivered until the last of November of this year.

* * *

Q. You said the parts won't get there until November? A. Well, we have been working on this on and off since last year. I have had four men working there for the last month.

[115] Q. Just prior to July 28th, how many employees of Heffernan were at work at Appliance Park? A. On the Friday before the strike, there were three of us there.

Q. Were you assigned to go back there on July 28th? A. Yes, sir.

Q. Any other employees? A. Yes, sir, two other ones, the same men.

Q. Will you name them? A. Dennis Lee Schamore and Henry A. Fust.

Q. Did you three go to the Park together? A. Yes, sir.

* * *

Q. Does your car have a contractor sticker? A. Yes, sir.

Q. Is it there all the time? A. Yes, sir.

Q. Have you been told anything about the use of Gate 3-A? A. Yes, sir.

Q. By whom? A. By the guards, the first day I went there.

Q. That was back in 1957, did you say? [116] A. Oh, fifty—I don't know, one or two, or three, along somewhere in there.

Q. On that morning of July 28th, you drove directly to Gate 3-A. A. I did, yes, to Gate 3-A.

Q. Will you tell what you saw and what happened? A. Well, it was a large body of men and they were carrying signs, part of them were, and I asked if I could enter.

Q. Where were these men standing or moving with rela-

tion to the entrance? A. Well, they were standing a bit back off the roadway, and I could pull off of the main road by them, by these men, this line of men, and I asked them if I could enter, and they said no. So, I asked them if I could go in and get my own personal tools and they said no. I asked who was in charge, and they said no one was. So, I asked them where their union office was, and I was told over on Poplar Level Road.

So, I drove to their union office and I went in, asked who was in charge and I was referred to the second office on the left at the rear of the building, and I talked to some lady there.

I showed her my union card and asked her if I could get a permit or a pass to get through there to get my own personal tools. I can't work without tools. So, she said well I don't know, you have a seat and then someone will talk to you. So, [117] in a few minutes, I talked to a Bob James, and I showed him my card and I told him I would like to get in to get my tools, and he said sure.

He wrote me a note, and he said give it to some one, he called his name, I don't know it now, and if that he isn't there, show it to anybody on the gate, and I did that, and the line opened up and I went in and I got my tools. The two men that were with me went in with me and we got our own personal tool boxes and left the plant.

Q. And did you have to surrender the pass to the pickets? A. No, sir.

Q. These two men that were with you, were they members of the union? A. Yes, sir.

Q. You recall what the pass said? A. It said "Please admit this man to pick up his tools in building one."

S. D. Comstock, for General Counsel, Direct.

Q. Did you have any conversation at all with Bob James? A. Only to tell him who I was and what I was asking for is all. Then this man, this Bob James, says, why sure, and he got a little card and then wrote it on there, and I left.

Q. Did he make any reference to the construction work at Appliance Park? A. At that time, no, sir.

Q. Did you go back to work there at any time? [118] A. I did not.

Q. While the picketing was going on? A. I went back on Tuesday, the 29th, after we loafed on the 28th, and we were replaced and we were sent to Eastern High School.

Q. You were assigned to another job? A. Yes, sir, we same three men, and we keep our regular working tools that belong to my boss in our gang boxes out there, at Appliance Park, we keep our welder and our carts and our ladders and things chained up.

So, I placed the two men at Eastern High School on Tuesday morning and I come back to the Appliance Park at Gate 3-A, to get some of the boss's personal tools. There were only three pickets there. I asked one of them if I could go in, and he said no, and I said well now I went to the union office on Monday morning and I got a pass from Bob James, and I picked up my own personal tools.

This fellow asked me how long would I be in there and I said maybe thirty minutes. So, the three of them let me through.

I picked up our ladders, benders and materials and I had to go to planning engineering office to get a pass or permit through to get out of the plant with any material that we haul or any tools that we haul on our trucks.

* * *

S. D. Comstock, for General Counsel, Cross.
B. C. Johnson, for General Counsel, Direct.

[119] Q. You didn't work there any time during the picketing? A. No, sir.

CROSS EXAMINATION:

Q. (By Mr. Sigal) If I understand you correctly, you did not return to Appliance Park after July 29th, during the strike period? A. After July 29th, yes, sir, I did not.

Q. On what day did you return? A. On the Monday morning after the strike was settled on the news on Sunday night, and I took five men in on that Monday morning.

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[120] BENJAMIN CHARLES JOHNSON was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Schurre) * * *

Q. What is your occupation? A. Brick mason and tender.

Q. Brick mason and tender. A. Yes.

Q. By whom are you employed? A. Liberty Engineering.

Q. Is the full name Liberty Engineering and Manufacturing Company? A. That's right.

* * *

[121] Q. Were you assigned to do any work at Appliance Park prior to July 28th of this year? A. I was told to come to Appliance Park to go to work August 4th.

Q. August 4th? A. Yes.

B. C. Johnson, for General Counsel, Direct.

Q. Did you go to Appliance Park on August 4th? A. Yes, sir.

Q. Were you by yourself? A. Yes, sir.

Q. You knew what kind of work you were going to do? A. Yes, sir.

Q. What was the job? A. Rebricking, repairing furnaces.

Q. Furnaces. And you went there on August 4th? A. Yes, sir.

Q. What time of morning did you get there? [122] A. I got there around quarter past seven.

Q. To which gate did you go? A. 3-A.

Q. Why did you go to Gate 3-A? A. That's the gate I am assigned to.

Q. Were you in a car? A. Truck.

Q. Truck have a sticker, contractor's sticker? A. Yes, sir.

Q. What did you see there, and do, when you got there? A. I saw the men had cards.

Q. You mean signs, picket signs? A. Yes, sir, and approximately three or four other fellows. So, I parked alongside the road, got out of the truck, and I asked one of the fellows with one of the cards were construction men going in.

Q. Will you repeat that, please, I didn't hear it. A. I asked him was there any of the construction men going in, and he said not that he knew of. I said I wanted to know, I heard there was a strike on, I wanted to know if I could get in to go to work. He said we will not keep you from going in, you can go in if you want to. I said no, I rather not, I respect the picket line.

Q. You respect the picket line. What did they say to that? A. I just went off then, back to my truck.

[123] Q. Did you notice what the signs said that they were carrying? A. I paid no attention.

Q. You paid no attention to the signs. You say you saw pickets carrying signs and you respected the picket line. A. Yes, sir.

Q. Did it make any difference what the sign said? A. Well, I guess ordinarily it would, but as I had already heard they were on strike—

Q. Against whom? A. General Electric.

* * *

RICHARD J. LANG was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Schurr) * * *

[124] Q. Do you work for Liberty Engineering and Manufacturing? A. Yes, I do.

Q. What is your occupation? A. Brick layer.

Q. Were you assigned to work at Appliance Park, like Mr. Johnson, on August 4th? A. Yes, I was.

Q. Did you go there by yourself, in your own car? A. By myself.

Q. On that day? A. August 4th.

Q. What time did you go? A. Seven a. m.

Q. Which gate did you go to? A. 3-A.

Q. Any reason why you chose that gate? A. That's the gate we are assigned to go to.

Q. That's the gate you were told you could enter. Did your car have a contractor's sticker on it? A. Yes, it did.

Q. Will you state what you saw and what was done, what you did when you got there? A. Arrived there, there was three pickets there. I respected [125] the picket line and left. They had their picket signs they was on strike against General Electric, so I left.

* * *

Q. You didn't work at all during the time of the picketing at Appliance Park? A. No, I didn't.

* * *

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[126] JAMES S. NAPIER was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Schurre) * * *

Q. And are you employed by Service Erection and Machine Company? A. Yes, sir.

Q. Is that one of the contractors who work at Appliance Park? A. Yes, sir.

Q. How long have you been working for Service Erection and Machine Company? A. Since January.

Q. Of this year? A. Yes, sir.

Q. What is the nature of your work? A. Millwright.

* * *

[127] Q. Were you assigned to do some work at Appliance Park by your company? A. Yes, sir.

Q. When had that work started? A. About a month before the strike.

Q. A month before the strike. How many members, or what was the size of the work force that Liberty had at the Plant? A. You mean service?

Q. I am sorry, I mean Service Erection Company had? A. I imagine we had about twenty or twenty-five.

Q. Twenty or twenty-five. Before the strike, how did you enter the plant? A. Gate 3-A.

Q. Does your car have a contractor's sticker? A. Yes, sir.

Q. Did you go to work on the morning of July 28th of this year? A. No, sir, we was working night work, second shift.

Q. Night work, oh, when did that shift begin? A. Four-thirty.

Q. Did you go there on July 28th about four-thirty? [128] A. Yes, sir.

Q. Will you state what happened when you got there? A. Well, I drove up to the gate, and there was pickets there, and I asked them if they was keeping out construction workers, and they said well, you have got to go down to the union hall and get a pass.

• • •

Q. Get a pass—from whom? A. Union hall—I said where is your union hall, they said on Poplar Level Road. I drove around and I finally found it, and I tried to get in, but it was so packed, I couldn't hardly move. So, I was late for work then, so I went back to the gate, and asked them if construction workers had went in, and they said no, and I said well, that is good enough for me, and I left.

• • •

Q. How long have you been employed by Wehr? A. About five and a half years.

* * *

Trial Examiner: All right, Mr. Segal, will you stipulate [156] this man is not a supervisor?

Mr. Segal: Yes.

Q. (By Mr. Rogers) Now, Mr. Terry, I would like to direct your attention to the period of time from July 28 to August 9, 1958, that's a period we have stipulated there was a strike at General Electric. Now, specifically directing your attention to that period, did you have occasion to go out to the premises of General Electric at any time? A. Yes, sir.

Q. When did you go out there? A. I went out there the morning that the strike was on.

Q. Where did you go? A. Gate 3.

Q. Gate 3? A. 3-A.

Q. 3-A? A. Yes.

Q. Now, when you got to Gate 3-A, what did you observe, if anything? A. Well, they had a picket line up there.

Q. Up where? A. At Gate 3-A.

Q. Can you tell us whether or not the pickets were carrying anything? A. Yes, sir.

Q. What were they carrying? [157] A. They were carrying a sign, a picket sign.

* * *

Trial Examiner: * * *

Mr. Segal has stated that all gates were picketed and that the signs used at one gate were like

[129] Q. And as far as you know, did the crew employed by Service Erection and Machine Company perform any work during the period there was picketing? A. No, there wasn't.

Q. You went back after the pickets were removed? A. Yes, sir.

Q. You know how much work there is to be done yet on that particular job? A. Well, we are finishing up now, shouldn't take over two [130] or three nights more.

* * * *

CROSS EXAMINATION:

Q. (By Mr. Sigal) * * *

Q. Do you know of your own knowledge who, if anybody from your company, did go to the plant? A. The only man that went in the plant to my knowledge is Mr. Wilson, he went in to get our records, so we could get paid.

* * *

JAMES F. WILSON was called as a witness by counsel for the petitioner, and after having been duly sworn, was examined and testified as follows:

[131] Direct Examination:

Q. (By Mr. Schurre) * * *

Q. Are you superintendent of the Service Erection and Machine Company? A. Yes, sir.

Q. How long have you been with that firm? A. Nine months.

Q. Prior to July 28, 1958, was your firm engaged in

those used at another gate. Mr. Segal has raised no question about the accuracy of the sign borne by the picket in General Counsel's Exhibit 2, so I should suppose that we might limit inquiries along this line to any contention of the General Counsel that additional legends were used. Certainly there is no dispute about what I have just said.

Mr. Rogers: That's right.

* * *

Q. Now, during the time that you have been employed by Wehr Constructors, Incorporated, have you had occasion to work at [158] General Electric previously? A. Yes, sir.

Q. By what—strike that. Have you received any instructions from anybody about the gate which you are to use to get into General Electric? A. Yes, sir.

Q. What are those instructions? A. Gate 3, 3-A.

Q. I am sorry. A. Gate 3-A is the one that we are supposed to go through, and come out.

Trial Examiner: Who gave you the instructions?

The Witness: My foreman.

Trial Examiner: Your foreman?

The Witness: Yes, sir.

Q. (By Mr. Rogers) Now, will you state whether you have ever been permitted to use any other gate? A. No, sir.

* * *

[160] RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) Mr. Terry, directing your attention to the period just before the strike at General Elec-

performing work under a contract with General Electric at Appliance Park? A. Yes, sir.

Q. Has your firm been doing work from time to time for General Electric? A. Yes, sir.

Q. For what period of time, how far back? A. Oh, two and half years.

Q. What kind of a job were you doing prior to the strike? A. Starting on some major changeovers.

Q. How big a work force did you have? A. Prior to the strike, we had approximately thirty people.

• • •

[132] Q. When did you first go to the job after the picketing started? A. I went Monday afternoon of the day the strike started, and I saw the pickets were there, and I made no effort to get in, and I went on over to the office, and they told me over there—

Q. Which office? A. Service Erection Company's office, and they told me none of the day crew had went to work at all and none of the second shift had went to work.

Q. Did you attempt to go to Appliance Park at all on the following day? A. Yes, sir.

Q. State what happened and why you went there? A. Well, Mr. Bleemel and myself,—

Q. Who is he? A. He is the owner of the company. He and I went to approach Gate 3-A and were stopped and were informed that we should go over to the union hall on Poplar Level Road and receive a pass.

Q. Had you told the pickets what you wanted to do? A. Told them we wanted to go in to get some paper work, and they said they would appreciate it if we would get permission [133] from the union.

Q. Whose car were you in? A. Mine.

Q. Yours. Your car have a contractor sticker? A. Yes, sir.

Q. What did you do after they told you to go to the union hall? A. I went over there and got a pass.

Q. Who issued the pass? A. Mr. Shake.

Q. You know his first name? A. Not positive, I think it is Charlie Shake, Charles.

Q. What did the pass say? A. Just admit bearer to premises, General Electric, and had his name on it.

Q. It was signed Shake, or Charlie Shake? A. I don't know whether it was abbreviated Charles Shake, or C. Shake, but he signed it.

Q. Did you go back there, tell us what happened? A. Go back where?

Q. To Appliance Park and get in? A. Yes.

Q. Did you show the pickets the pass? A. Yes.

Q. Then you got what you wanted, some records, was it, [134] paper records, were they? A. Yes, payroll and various types of paper work has to be maintained on a job of that size.

* * *

Q. Did you have occasion to go back there several times to get some records, while picketing was going on? A. Yes, sir.

Q. What happened? A. I just went over to the union hall first and got a pass and went on in.

Q. When you left, did you surrender the pass to the pickets? A. Yes, sir.

Q. Was it at their request? A. Yes, sir.

Q. Did you ever meet with any representative of this respondent during the period of the strike? A. Yes, sir.

Q. Now, who said that? A. Well, I wouldn't know, there were so many of them standing there, I wouldn't know.

Q. Where were you when this happened? A. We was in the car at this time.

Q. Where was the car? A. By the Gate 3-A here (indicating). And so they were lining us beside 3-A (indicating) so we pulled up. I was seated in the back, said "Can we go in?", they said "Go home." [166] So many of them we just kept driving; there was an officer standing in the street; he said, "Move on, move on," so we just kept going on.

Q. At the time the pickets told you to go home, where was Mr. Tupuritis, and where was Mr. Terry? A. They were seated in the car, too.

* * *

DIRECT EXAMINATION:

Q. (By Mr. Clay) * * *

[167] Q. And was the job that you were working on, work that had not been finished at the time the strike started? A. It just started, just started.

Q. You had just started to work? A. Yes, sir.

Q. When did you start? A. Started on a Wednesday, I think.

Q. The Wednesday before the strike? A. That's right.

* * *

Q. Will you state when and where that meeting was held? And who was present? A. Well, when I am not positive, I believe it was Wednesday [135] after the strike first started, July 30. Mr. Bleemel, the owner of the company, and Mr. T. A. Pitts, who is our business representative for the district counsel went over to the union hall to talk to somebody over there about admitting our people to go in and do the work.

Q. You were in the conference, were you not? A. Yes, sir.

Q. All right, what happened? A. Well, we sat down and discussed the situation and we were of the opinion that our contract was going to be cancelled if we didn't get in there to do the work. So, we discussed and talked for a little while.

Q. Who was there on behalf of the union? A. Mr. Bill Lessor, gentleman I talked to.

Q. Anybody else? A. Oh, there was some there, but I don't know who they were.

Q. State what the conversation was? A. Well, I couldn't tell you what all the conversation was, but I just got through telling you what it was about. And at the end of the conversation, we had not received any permission to enter the park.

Q. What did Mr. Leesor say when you made this request for permission to enter? A. Well, he just mostly—well, he said I know that you can appreciate that we have a picket line up over there.

[136] Q. That was about the size of the meeting? A. About the extent of it, yes.

Q. Did you again have any meetings with any representatives of the union? A. Yes.

CROSS EXAMINATION:

Q. (By Mr. Segal) • • •

[168] Q. You have gone in other gates, have you not? A. The first gate.

Q. Gate 3? A. Gate 3-A. The guard won't let you go through 3.

[169] Trial Examiner: Now, you just think for a minute and give us your best truthful recollection.

Do you recall ever seeing an employee of G. E. walking through Gate 3-A?

The Witness: I will tell you this way, if you go to 3-A, if you ain't got your button on, the guard is going to stop you. See, they have a guard there, and you are supposed [170] to have your button so he will know who you are, going through.

• • •

FURTHER CROSS EXAMINATION:

Q. (By Mr. Segal) • • •

Q. You don't know whether that was a badge or a card or what it was. A. I couldn't say it was a badge, because you could go through that way, if it wasn't a badge, because I tried to go through 3-A myself, I had a brother-in-law carry me out to G. E. and so we started through 3 and the guard stopped us and [171] said no, he can't go through 3, he has to go through 3-A, and that was my first time I started working for Wehr. So he turned us around to go through 3-A, so he pulled up and let me out and I went on through.

• • •

Q. Please tell us about those and when they were held? A. Well, when, I don't know exactly whether it was Thursday, the 31st—I will say it was the 31st.

Q. Was this meeting for the same purpose? A. Yes, sir.

Q. Who was present? A. Mr. Bleemel, Mr. T. A. Pitts, Mr. Oscar Coke.

Q. Who is Mr. Pitts? A. Business representative for the district council.

Q. That's your union? A. That's right.

Q. And Mr. Coke, have you identified him? A. He is Commissioner of Industrial Relations for the State of Kentucky.

Q. Who was there on behalf of the union—I mean the respondent? A. Mr. James, Mr. Fitzmorris was there, and a couple of others that I don't recall their names.

Q. You know who Mr. Fitzmorris is? A. Positively, no.

[137] Q. You know what position Mr. James holds in the union? A. I sure don't.

Q. What was said at that meeting? A. It was discussed about the same thing, the admittance of our people to go into General Electric's park and continue working on our project and it was practically the same discussion, just talking back and forth, and Mr. James said he had no authority to give us privileges to enter the park. However, that they were going to have an executive board meeting that night at four o'clock, and that was the time that General Electric and the 761 union were negotiating, and he was to call our business representative and inform him of what action was taken, and that evening he hadn't called, so I called Mr. James and he said that they hadn't got the

executive board meeting together, for the simple fact that the negotiations has lasted too long.

So, I called my business representative for the district council and he said he would talk to him the next morning, and so far as I know, I haven't heard any more about it.

Q. Mr. Brown told you, you said, the executive council was going to meet to decide the question as to whether they were going to permit you to go in the plant, is that what you said? A. Will you say that over again?

Q. You said that Mr. James, was it? A. Yes.

[138] Q. Said they were going to take up this matter? A. Said he would mention it to the executive board and he would discuss it with them.

Q. Did you hear from them during the strike as to what action the executive board took? A. No, sir.

Q. Did any of your crew or work force perform any work during the period of the picketing? A. No, sir.

Q. Did they go back to work after the pickets were removed? A. Yes.

Q. Are they still working there? A. Yes.

Q. How much work remains to be done? A. Well, it is very near completion.

* * *

CROSS EXAMINATION:

* * *

[139] Q. (By Mr. Sigal) * * *

Mr. Schurre: We will stipulate that he is a supervisor.

Q. Now, on these occasions when you went to the union office to talk to the people in the union office, you asked them

in effect to remove the picket line, insofar as your employees were concerned? A. No, sir, I asked them to grant us permission, give us special passes. I say I did, I mean we did as a body, special passes to cross their picket line.

Q. In the absence of passes, you didn't want to cross the picket line? Is that what you mean? A. That's right.

• • •

Mr. Schurre: Will respondent stipulate that Bob James [139-A] is first vice president of the respondent union?

Mr. Sigal: We will so stipulate.

Mr. Schurre: Will you also stipulate that Bill Leesor is recording secretary?

Mr. Sigal: Yes, we will so stipulate.

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[140] The Witness: SYLVESTER D. COMSTOCK.

Direct Examination:

Q. (By Mr. Rogers) Mr. Comstock, will you tell us whether or not you are the same Mr. Comstock who testified previously in the 10(1) Injunction—in the injunction proceeding before the District Court of Kentucky for the Western District on last Thursday? A. I am.

Q. And at that time, I believe, you were employed by the R. J. Heffernan firm, is that correct? A. That's correct.

Q. Now, with regard to your testimony in that case, I believe you testified that on the morning of July 28, 1958 you had occasion to go out to Appliance Park to Gate Number 3-A. Now, will you state for the record in this pro-

ceeding [141] what occurred on that morning when you arrived at the premises of General Electric. A. On Monday morning, three of us went out there for work, and they were on a strike and they had pickets at Gate 3-A.

Q. Now, will you state for the record whether or not the pickets were carrying anything. A. Yes, they were carrying signs, part of them were.

Q. I will direct your attention to general counsel's Exhibit Number 2 and ask you to state whether or not the sign being carried by a man in that picture is similar to— A. Similar, yes.

Q. Similar to the sign that the pickets were carrying that morning. A. Yes.

Q. Now, you stated that you and two other persons went out there that morning. Who were the other two persons? A. Dennis Lee Schamore and Henry A. Fust.

Q. Who are they? A. One is my helper and the other one is a journeyman.

* * *

Q. In your truck. Now, when you arrived at Gate Number 3-A, approximately what time of day was it? A. I would say it was about ten minutes of eight.

Q. Now, on that occasion, will you tell us whether or not [142] you engaged in any conversation with anyone? A. I did.

Q. With whom did you engage in conversation? A. With a man there, that was standing there blocking it, that gate.

Q. And where were you and where was he when you had this conversation? A. I was then in the truck, and he was standing at my window of it, the truck.

contractor and you are not supposed to come through this gate." And I said, "Well, [178] that's what they told me down there," and they said, "Oh, the devil with that; you do like you are supposed to do." So I went back and asked the man, or asked some of them, if they knew where the pass was, and they said somebody had took it up. So I drove on down to 3-A and there they said, "Well, just go on in," that they took the pass up or something. And that was about the size of the conversation.

Trial Examiner: Mr. Segal, I would like for the record, please, the name of the man in the blue suit who sits at your table.

Mr. Segal: Bob James.

Trial Examiner: Now, does he have any connection with the respondent?

Mr. Segal: Yes, he is First Vice President.

• • •

[179] Q. Have you performed work out at Appliance Park in the past? A. For Garst-Receveur or other companies?

Q. For Garst-Receveur. A. Up until possibly two to three months before the strike, it was, from the time I went to work for them it was almost continuous up until that time.

Q. During that period of time, what gate did you use? A. 3-A.

• • •

Q. And where were Dennis Schamore and Henry Fust? A. They were sitting by me.

Q. All right, will you state for the record what conversation you had with the pickets out there?

• • •

A. So I asked them if they were going to let us in and work and they said no. So I asked them who was in charge and they told me no, and they told me no one. And so I asked them where their union office was and they told me over on Poplar Level Road. And I went over to their office. And—

Q. Now, was that the extent of the conversation? A. That was, there.

Q. Now, when you went over to Poplar Level Road, where did [143] you go? A. I parked along the roadside and I went in, and I went in the union office by myself. I asked the first person that I met who was in charge there, and they sent me to the rear of the building to the, I think the second office on the left, and I talked to some lady there. I pulled my union card out of my pocket and I showed it to her and I told her who I was and then as to what I wanted. And she said that I would have to wait. And then—and then, so I sat down there and maybe five minutes pass and some man come up. He asked me what—and he asked me what, he asked me what that I wanted. I told him that I would like to get a pass or a permit to get through that gate so I could pick up my own tools. And this man said "Sure." And then he wrote me out one, a pass, signed it, and then told me to give it to a certain person named and that if he wasn't there to give it to one of the men on the gate there.

DIRECT EXAMINATION:

Q. (By Mr. Clay) Were you assigned any identification, button or badge, in order to get into Appliance Park? A. Yes, sir.

Q. What did it consist of? A. On my car I have a white badge that says "Contractor's" and on my person I had a blue badge, Number 1317, I believe.

Q. You used those as means of identification to get into 3-A? [180] A. Yes, sir.

Mr. Clay: That's all.

The Witness: They check it each day.

* * *

[184] RE-CROSS EXAMINATION:

Q. (By Mr. Segal) One other thing, sir: You were hanging doors in Building 5, is that right? A. Yes, sir.

Q. And you left this last Friday, about which I questioned you a moment ago, approximately what time? A. Oh, let's see, now. Last Friday?

Q. When you were hanging the doors. A. I would say I left 10 to 15 minutes after four.

* * *

Q. All right.

What did you do then, if anything? A. I left the office, thanked him and left, and then I drove over there and I showed it to them and they opened up and I went in. And I picked up we three men's tools.

Q. When you returned to the premises of General Electric, were Schamore and Fust still with you? A. Yes, sir.

Q. And what gate did you go to, if any? [144] A. I went to Gate 3-A.

Q. And will you tell us whether or not that is the gate through which you went? A. Yes, sir.

Q. Following your being admitted to the premises of General Electric on that morning, what did you do, if anything? A. After I went in and got my tools, then, why we left there.

Q. By what route did you leave? A. By Gate 3-A.

Q. Now, will you state whether or not there were any pickets there when you left? A. There were.

Q. And will you tell us whether or not they were carrying any signs? A. Yes, sir.

Q. Now, directing your attention to the following day, July 29, will you tell us whether or not you had occasion to go to General Electric premises on that day? A. Yes, sir, yes I did.

Q. Now, when did you go there? A. I went there on the morning of the 29th at about nine or nine-thirty.

Q. And where did you go? A. I went to Gate 3-A.

Q. On that occasion, will you tell us whether or not there [145] were any pickets there? A. There was three there.

Q. Were they carrying anything? A. Yes, sir.

Q. What were they carrying? A. Picket signs.

Q. On that occasion, did you have any conversation with anyone? A. Yes, sir, I did.

Q. Was anyone with you? A. No, sir, I was alone.

Q. To whom did you talk? A. I talked to one of them on the gate and I asked him if I could get into the building one to our gang box and to pick up some of the boss' personal tools that I was going to work out at Eastern High School.

Q. What did the picket say? A. He said, "Well, why, you can't do it," and I told him that I had got in and got a pass from the union office on Monday morning and, and they hemmed and hawed and said, "Well, go on in, then."

• • •

[147] CROSS EXAMINATION:

Q. (By Mr. Segal) • • •

[148] Q. As a matter of fact, when you got a pass the first time, you didn't surrender it as you left? A. No, sir.

Q. You kept it with you, is that right? A. Well, after I left Appliance, I lost it, or, lost it or misplaced it, or I threw it away, one of the three.

Q. Mr. Comstock you supervised the other two men that worked with you, is that right? A. Yes, sir.

Q. So you were sort of a supervisor for that job? A. Yes, sir.

Q. And to what building did you go when you got your— A. Building one.

Q. That's a production building; I mean by that they make— A. That's right.

Q. What do they make in there? A. Washers and dryers.

• • •

[149] RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) Mr. Comstock, will you tell us whether or not the work which you were performing, or—yes, the work which you were performing at Appliance Park related to complicated electrical apparatus? A. Yes, yes it does.

* * *

[150] FURTHER RE-DIRECT:

Q. (By Mr. Clay) * * *

Q. And how long have you been at Appliance Park, off and on? A. Maybe five years, in and out, I was there.

Q. Were any instructions given to you and your men as to what gate to use? A. Yes, sir.

Q. What were those instructions? A. 3-A.

Q. Sir? A. 3-A.

[151] Q. Was anything issued to you to identify your truck? A. I was issued a white kind of tractor windshield pass, and I was also issued a blue personal pass; I have also been issued a red kind of, a red kind of tractor pass.

Q. That is called "supervisory." A. That is a roving pass, yes.

Q. Have you ever gone through or come from the Park using any gate other than 3-A? A. Only back when the building six was being built and we used to could use the Turner Struck Gate.

Q. Turner Struck was—what did they perform? A. They were general contractors in the building of building six.

Q. So you used only contractor gates? A. Only the

two gates, yes. And that gate had been closed since the early spring.

* * *

[153] Trial Examiner: How long had you been working at the G. E. Plant immediately before the strike began?

The Witness: Well, I would say maybe a year or two.

Trial Examiner: Every work day?

The Witness: Practically. Maybe one miss a day here and there is all.

Trial Examiner: What was the nature of the work in which the journeyman and your helper were engaged?

The Witness: They were helping me install and put cables, which is known as a Stromberg system, which is a new outfit that's something to do with the press workers and their punch cards, or something. And the main portion of it isn't to be shipped until the latter part of November of this year.

* * *

Mr. Rogers: MR. LONNIE TERRY.

* * *

[155] Direct Examination:

Q. (By Mr. Rogers) * * *

Q. Are you employed? A. Yes, sir.

Q. By whom? A. Wehr Constructors.

Q. In what position are you employed, what do you do? A. Laborer.

Q. That's not a true statement. As you have testified, the contractors don't have badges; is that right? A. Well, 100 percent of them do not have badges.

Q. Well, as a matter of fact, didn't you tell us that this policy has been abandoned? A. Well, I say it is obsolete; we haven't been able to make it work. However, we do have a large number of badges out. In other words, the older employees, a large number of them still [205] have their contractor badges.

Q. You mean you are not calling them in? A. It doesn't do any good.

* * *

[206] A. Yes, there were some contractor employees that came through Gate 3-A during the strike.

Q. Well, now, do you know how many? A. Oh, that would be kind of rough to—

Q. Do you know how many cars? A. I could give you a rough estimate. I would say approximately 15.

* * *

[207] A. I might mention that during the period in question we kept a register of all vehicles that came through Gate 3-A, in addition to our normal checks. This register was instituted for that reason, to prevent G. E. employees from coming in through Gate 3-A, as a double check.

Q. Well, you didn't register the individuals in cars, only the car, is that right? A. Anyone that came in Gate 3-A during the strike was registered on this particular register.

Q. Any individual? A. Yes, sir.

* * *

[208] Q. Well, do you agree with Mr. Means there were about 2,000 people working in there? A. Yes, sir, I would say approximately that.

Q. So, figuring four people per car, that would be what, approximately 500 cars? A. If you had four people to the car.

Q. Were these individuals checked as to whether or not they were contracting employees or regular employees? A. They weren't checked individually, no, sir.

• • •

[211] Q. So that the key bulletin, so far as you are concerned, and your instructions are concerned, is Bulletin Number 9; is that correct? A. As far as the written part of it, yes, sir.

Q. So these other bulletins are relatively unimportant. Number 9 is the source of all your authority, is that correct? A. Well, other than oral instructions that we receive from time to time on those.

Q. Now, this plant bulletin number 9 actually was issued on January 20, 1954.

Here it is, right here (handed). A. Yes.

Q. And, as outlined in what you might call a preamble, it is stated, "The purpose of this bulletin • • • In the event of labor difficulties with the various AF of L Craft locals this separate entrance gate for Direct Contractors' employees should also minimize the possibility of picketing our regular entrances, Gates #2, #3 and #5 used by GE employees. This latter gate was previously designated as Gate #4 in Plant Protection Bulletin #8 dated January 5, 1954." Is that correct? A. That's correct.

• • •

tric will you tell us whether or not you were working out at General Electric? A. Yes, sir.

Q. And what were you doing? A. Well, we was digging a ditch.

Q. For what purpose, do you know? A. No, sir, I don't know.

Q. Where were you digging the ditch? A. At Warehouse 10, I believe is what they call it. I think that's the number on it.

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[163] LAWRENCE WALTON, a witness called by and on behalf of the General Counsel, having previously been sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Rogers) * * *

Q. Are you employed? A. Were, have been, laid off now.

Q. You were employed by Wehr Constructors. A. That's right.

Q. In what capacity are you employed? A. What do you do? A. Laborer.

[164] Q. How long have you been so employed? A. Beg your pardon?

Q. How long have you been employed there? A. Two and a half years, off and on.

Mr. Rogers: May it be stipulated that Mr. Walton is not a supervisor within the meaning of the Act?

Mr. Segal: (Nods.)

L. Walton, for General Counsel, Direct.

Q. Now directing your attention to the period of time that, in late July and early August of this year, when there was a strike at General Electric, did you have occasion at any time during that strike to go out to the Appliance Park premises? A. Yes, I did.

Q. When did you go out there? A. On Monday morning, it was.

Q. The first day of the strike? A. Yes, the first day.

Q. Now, when you got out there, where did you go? A. Well, we rode the bus out, and—

Q. Who is "we"? A. Lonnie Terry. And so we got off the bus and we waited on Mr. Arnold, that's the fellow seated over there.

Q. Mr. Tupuritis. A. Yes. So he came along, he picked us up, and so we reached Gate 3, and a bunch of them were standing there and so we, some of them hollered out and said, "Go home", so we just kept on going.

Q. What Gate did you go to, you say, 3-A? [165] A. 3-A, that's right.

Q. Now, what did you observe, if anything, at Gate 3-A? A. Well, we were going to work—

Q. What? A. I beg your pardon?

Q. What did you see, if anything, at Gate 3-A? A. Oh, they had pickets.

Q. Now, what were the pickets carrying? If anything? A. I think it was USIF something on strike.

* * *

Q. Now, on that occasion, did you have a conversation with any of the pickets? A. No, just asked if we could go in, and he said "Go home."

[215] Trial Examiner: What is the means of communication, if any, between Gate 3 and Gate 3-A?

The Witness: Gate 3 and Gate 3-A intersect at the gatehouse. If you come in Gate 3-A, approximately, oh, I would say 30 feet after turning off of Buechel Bank Road, you turn east. That road intersects with the roadway coming in from Buechel Bank Road past the gatehouse. In other words, you have an intersection there. Gate 3 roadway itself intersects Buechel Bank Road at a 90-degree angle running north and south. Gate 3-A passes the gatehouse going east and west.

• • •

[216] Trial Examiner: How are finished products removed from this plant?

The Witness: Finished products are removed by rail and by truck. If they go out by truck they exit at Gate 3 and Gate 4. Gate 3 has a truck pull-off, it is approximately 33 feet wide, it—

Trial Examiner: That's all right. They go out at 3 and 4 if they go by truck?

The Witness: Yes, sir.

Trial Examiner: Is one trucking concern, or two or three trucking concerns used exclusively, or are there a much larger number?

The Witness: A larger number, sir. I wouldn't venture a guess.

Trial Examiner: Are local retailers of the products made at this plant permitted to come to the plant and obtain the [217] desired quantity?

The Witness: No, sir, that isn't handled that way.

Trial Examiner: You ship it out to even local people by truck?

The Witness: Yes, sir.

• • •

FURTHER CROSS EXAMINATION:

Q. (By Mr. Segal) There is no obligation on any driver to carry the same passengers every day in his car? A. No, sir.

Q. You don't register the car? A. No.

Q. Now, in line with what the Trial Examiner was just asking, on the contractors' supplies coming in, let's say the contractor wants some supplies and needs some supplies, other than what he has himself, he wants to buy from another man; what gate do these people use? A. If the contractors' supplies—if it is contractors' supplies they come through Gate 3-A.

Q. How do you know this? A. We check the bill of lading. When they come in they have got their bills where they are going, who it is for. Otherwise they would never know where to go to let it off.

• • •

[218] RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) • • •

[219] Q. Now, it is my understanding that that gatehouse is referred to as gatehouse Number 3. A. That is correct.

Q. And it is at that point that traffic passing through Gate Number 3 and through Gate Number 3-A is checked; is that correct? [220] A. That is correct.

McDONALD WOODS, a witness called by and on behalf of the General Counsel, having been previously sworn, was examined and testified as follows:

* * *

Direct Examination:

Q. (By Mr. Rogers) What is your residence, Mr. Woods? A. 3419 Allison Way, Louisville.

Q. And are you employed? A. Yes, sir.

Q. By whom are you employed? A. Garst-Receveur Construction Company.

[172-173] Q. In what capacity are you employed? A. I am estimator, supervisor and I carry a millwright card.

* * *

Q. How long have you been employed by Garst-Receveur? A. Almost two and a half years.

* * *

[174] Mr. Rogers: I will stipulate he is a supervisor.

Mr. Segal: (Nods.)

Q. (By Mr. Rogers) Now, directing your attention to July 28, the date upon which the—the day following the commencement of the strike at General Electric, did you have occasion to go to the premises of General Electric? A. Not at that time.

Q. Did you have occasion to go to the premises of General Electric at any time during the strike? A. I did.

Q. More than once? A. Yes, sir, twice.

Q. When was the first time? A. I don't remember the exact date, but it was approximately the Monday following the strike, or the Monday before the strike was over.

* * *

J. Gatton, for General Counsel, Re-cross.
R. H. Weber, for General Counsel, Direct.

Q. Now, I note on the diagram near the gatehouse, at Gate Number 3, the common gatehouse for Gate 3 and 3-A. On the stretch of roadway that comprises Gate 3-A there is a widening in the roadway. A. That is correct.

Q. What is that for? A. That is used for a parking area to register those contractor persons—employees, in, or to turn around in and go back if the case may be that they don't belong there; because this is an 11-foot driveway down through here (indicating) and not wide enough to turn around on. Of course it could be turned around on, but it would be difficult.

• • •

[223] RE-CROSS EXAMINATION:

Q. (By Mr. Segal) • • •

Q. You are telling us, therefore, that all of the trucks come into 3 except the trucks using the direct contractors' trucks, [224] is that right? A. Well, we have trucks coming in Gate 4 also, but if it is construction material for the contractor it comes through Gate 3-A only.

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[228] ROBERT H. WEBER a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Rogers) Mr. Weber, are you employed? A. Yes, I am.

M. Woods, for General Counsel, Direct.

[175] Q. Now, on the first occasion that you went out to General Electric, did you have occasion to have a conversation with any of the pickets? A. I did.

Q. Who else was present at the time you had this conversation? A. There was no one with me. There was just the people on the gate.

Q. And where was this? A. That was at Gate 3-A.

Q. What time of day was it? A. I would say it was maybe 9:30 or 10:00 o'clock.

Q. In the morning? A. In the morning.

* * * *

[177] Trial Examiner: Now, Mr. Woods, did you talk with the man who wore the picket sign or was it someone else?

* * * *

The Witness: The man with the picket sign said he would rather I would get a pass to go in, so I asked him where to get it and he said to go over on Poplar Level Road; anyway, to their union headquarters, so I went over there and I believe the man in the blue suit I talked to, I'm reasonably certain of that, I asked him if I could go in and look at some work and would like to cross their picket line, so he issued me a pass, and I went back to 3-A and they told me at 3-A, the pickets, now which ones I don't remember, but they said trucks were going in that gate, to go to 3. So I went up to 3, gave the man the pass, and went up to the guardhouse.

And when I got to the guardhouse, they looked at it and they said, "Now, you know you are a

Q. By whom are you employed? [229] A. The General Electric Company at Appliance Park.

Q. In what city? A. I beg your pardon.

Q. In what city? A. In Louisville.

Q. In what capacity are you employed? A. I am a buyer in the purchasing section of the relations and utilities operations.

Q. How long have you held that position? A. Approximately six years.

Q. And will you state briefly what your duties are in your capacity as buyer, purchasing section, relations and utilities? A. Briefly my duties are to purchase expense materials, services materials; award contracts and sell scrap.

Q. Now, when you speak of awarding contracts, to whom do you award contracts? A. To outside independent contractors.

Q. Now, with regard to awarding such contracts, will you state what the fact is with regard to whether or not you let contracts for the relations and utilities department only? A. We award contracts— We award all the contracts for the relations and utilities department, and we award some contracts for the other buildings, the manufacturing buildings, on request.

Q. Now, for what type of work or services do you let contracts to independent contractors? A. Is the question for what type?

[230] Q. Yes. A. We let contracts to general contractors—is that the type that you—

Q. Yes. A. Electric workers, sheet metal workers, etc.

Q. Now, directing your attention to July 28, 1958, can

you state whether or not the relations and utilities department had any contracts let with any independent contractors? A. Yes, we did.

Q. Did you have more than one such contract? A. We did. We had two contracts with the Garst-Receveur Construction Company which has been previously mentioned here, and we had one contract with Liberty Engineering for a sheet metal job.

Q. Now will you state for the record whether or not any work had been commenced pursuant to these contracts prior to July 28, 1958? A. Yes, sir, there was.

Q. When were these contracts let? A. Taking them one at a time, the first contract with Garst for building a mezzanine in Building 6, I believe was awarded about June 10.

Q. Of what year? A. Fifty-eight. And work commenced about the 26th of June, the same year. The second contract with Garst was for an [231] installation of a truck dock on the rear end of Building 5, that job was awarded around the 23rd of June of '58, work began the 29th, the same month.

The third contract to Liberty Engineering was awarded right at the first of July and work began about five or six days thereafter.

Q. As I understand your testimony, work had been commenced with regard to all of these contracts prior to June 28, 1958, is that correct? A. Not prior to June 28.

Q. July, I am sorry. A. Prior to July 28, yes.

Q. And will you state what the fact is with regard to whether or not any of these contracts had been completed by July 28, 1958? A. None of the three contracts I mentioned was completed at that time.

* * *

[238] RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) Mr. Weber, with regard to these three contracts, the installation of the mezzanine in Building 6, for example, was that or was that not to be done pursuant to any kind of specifications? A. It was.

Q. Now, from where did those specifications come? A. These specifications originated from our plant engineering department, which is a department in the relations and utilities department.

Q. Now with regard to the specifications, do those specifications and did the contract itself call for a lump sum bid? A. It did.

Q. For a complete job? A. That's right.

Q. Now, with regard to the amount of that contract, that was negotiated, will you tell us whether or not that amount was ever subsequently changed or modified. A. Now will you refresh me which particular job you are speaking of?

Q. The installation of the mezzanine at Building 6. A. I don't recall offhand, as I mentioned a minute ago we have changes on a good number of contracts that we start out with of that nature, that size. I believe it was in excess of $8,000 [239] and sometimes we do have extras, I don't recall if we did on that one.

Q. Now, will you tell us whether or not all of these contracts were let on the basis of a lump sum bid? A. They all were.

Q. Can you tell us whether or not they were all let for a completed job? A. Yes.

[185] JOHN GATTON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

[186] Direct Examination:

Q. (By Mr. Rogers) * * *

Q. And at that time you testified with regard to your duties at General Electric, and testified that you were a lieutenant in the plant, a plant guard, is that correct? A. That's correct.

* * *

Q. I wonder if you would describe for the Trial Examiner, and display to the Trial Examiner the various badges used as [187] identification for entrance and exit of Appliance Park, and explain their function. A. Basically we have three particular kinds of classifications. One is permanent, one is semi-permanent, and the other is temporary. Now, our contractor personnel fall under what we consider as semi-permanent type pass. For the contractor supervisor we have an oval shaped plastic suction cup type sticker that goes on the windshield in front of the rear-view mirror, and its color is red with black printing on it.

For the hourly contractor help and personnel we have a white oval shaped plastic black suction cup type windshield sticker that goes on the windshield in front of the rear-view mirror.

The difference between the two—both are required to use Gate 3-A for ingress and egress, but the red type is permitted to rove between buildings. The white type is re-

stricted to the parking lot adjacent to the job where the man is working.

* * *

[188] Q. (By Mr. Rogers) You had a badge in your hand there, Mr. Gatton. Would you briefly explain that? A. This is the type contractor personnel pass or badge that we still have a large number out, however the system itself is—it was never practical, insofar as the men wearing them. It is similar to our employee badge system. It was difficult to enforce, however, we still have a large number of these out on the contractor personnel.

* * *

Q. Now, will you state for the record whether or not any type of badge other than the two which you have just described as being for the contractor personnel—the red oval badge and the white oval badge—will permit entrance to Gate Number 3-A? [189] A. They will not.

Q. And will you state for the record whether or not a vehicle which is supplied with one of the contractors' badges or stickers, either red or white, would be permitted entrance to any of the other gate entrances? A. It would not.

* * *

[194] Q. (By Mr. Rogers) Mr. Gatton, I hand you what has been marked for identification as General Counsel's Exhibit Number 4, and ask you whether or not the subject matter which is contained [195] therein has been implemented by the plant protection force? A. It has been, sir. Each guard has been briefed on this subject, and has a copy which is incorporated in a permanent-type manual.

* * *

[199] FURTHER DIRECT EXAMINATION:

Q. (By Mr. Rogers) Mr. Gatton, with regard to the control of ingress and egress to Appliance Park, what methods of identification are asked of or required of persons passing through any of the gates on foot? A. They have the—You are speaking of the contractor as well as the G. E. employee?

Q. That's right. A. The G. E. employee coming in on foot, if he is not recognized on sight by the guard, which happens quite frequently— I mean, they have been on the gates for so long they recognize the people that do come in on foot—they pass them on in—but if they should fail to recognize the individual as a G. E. employee he will be asked to show his G. E. identification card.

If a contractor employee should come in, we at the present time keep a card on file with his name, and what have you, the company he works for, at the gatehouse. If he should come in and say he works for that particular company, then that card is checked, and if he doesn't have one of our badges—and, like I say, the badge system has been difficult to enforce, we will be the first ones to admit it—

* * *

CROSS EXAMINATION:

[200] Q. (By Mr. Segal) * * *

[202] Q. So that if G. E. employees—if a G. E. employee comes through he could have contracting employees in the car, and contracting employees that go in this one gate you are telling us about, 3-A, he could conceivably have G. E. employees with him, isn't that true? A. Gate 3-A is the tightest gate we have got. We have got a man available

there that can check every car that comes through there, because we have a limited number that come through 3-A.

* * *

Q. What is the name of the guard that's on permanent duty, so to speak—the guards, I guess there are more than one at [203] different shifts—what are their names? A. We have got Willard Johnston on Gate 3; John Reed works Gate 3; Payne works Gate 3; Elmer Kissinger works Gate 3; and Ray Mutter works Gate 3.

Q. How about Gate 3-A? A. They are a terminus.

Q. I see. A. When they are at 3 they control Gates 3 and 3-A.

Q. After a car once gets into the Appliance Park, in other words, past the gate, they could park, or they could drive anywhere around the Appliance Park area, is that correct? There are no barriers between— A. No, there are no road blocks.

Q. That's right. So if a person got in Gate 3-A he could conceivably go over to the warehouse, if he wanted to? A. That's true.

Q. The warehouse parking lot. Or if he got in Gate 3 he could go over to where the contractors' employees work, if he wanted to? A. That's true.

Q. And by the same token if he went in 3-A he could conceivably let off individuals who might be working in Building 5, or 4, or 3, and then park; is that correct? A. You say he comes in 3-A—

Q. Or 3, or any gate. He could go by and let an individual off [204] at the plant, or at a point closest to the plant where he is working, and then go on and park, isn't that correct? A. Oh, that's true.

* * *

RE-CROSS EXAMINATION:

Q. (By Mr. Segal) • • •

[242] Q. Where is Central Maintenance? A. They are a department in the utilities and they are another department in our operation.

Q. Are you familiar with that operation of Central Maintenance? A. I don't know what you mean by familiar, I know where they are and who they are, yes.

Q. Do you know how they operate? A. Not completely, no.

Q. Well, do you know how many employees are part of Central Maintenance? A. I don't know for sure. I think there is around 100. That's my opinion. I don't know whether it's a fact.

Q. Yes. Now you do know, and you have seen bids from this department on jobs, is that right? A. Yes.

• • •

[244] Q. (By Mr. Segal) Now, some of these bids I assume were rejected by Central Maintenance? In other words, other contractors got the jobs? A. Yes.

Q. And I assume by the same token some of them were accepted and the independent contractors' bids were rejected. A. That's correct.

• • •

[246] Trial Examiner: • • •

Did Central Maintenance employees work for G. E. on a full-time basis?

The Witness: Yes, sir.

Trial Examiner: Well, if they are being paid on a full-time basis by G. E., why would G. E. want Central Maintenance [247] employees to bid on

a job, and I use the word, "bid," as distinguished from the word, "estimate".

The Witness: Well, I think to my knowledge, sir, the reason for that is that the various products departments at Appliance Park operate on an independent basis, each to make a profit, and I think it is their choice as to what they do, whether they go outside or inside. However, they go inside, by inside I mean Central Maintenance, whenever they possibly can.

Trial Examiner: I don't understand. Say it again.

The Witness: Let's take, for example, Building 1, we talked about, which manufactures home laundries. They are an entity all to themselves, so far as management is concerned and responsibility for making a profit. Now, if they have a job they will go to Central Maintenance for an estimate on it. They are not obligated to have Central Maintenance do their work, they could have someone on the outside do it. However, all efforts are made to funnel work down through Central Maintenance consistent with the labor force and so forth they have and with the type of job itself.

Trial Examiner: If Central Maintenance can do it cheaper, Building 1 might have Central Maintenance do it, is that right?

The Witness: That's correct.

Trial Examiner: If an outside contractor can do it cheaper, Building 1, or the management of Building 1, may get the outside contractor.

[248] The Witness: That's correct.

* * *

[250] FURTHER RE-DIRECT EXAMINATION:

Q. (By Mr. Rogers) Mr. Weber, now I show you a document consisting of several pages stapled together, [251] marked for identification as General Counsel Exhibit No. 8 and ask you to state what that is? A. These are general conditions dated January 10, 1958.

Q. And what is the nature of the general conditions? A. These nine pages of general conditions accompany our purchase orders—I will back up. They accompany—they are a part of the plant engineering specifications on jobs that we award and these, since our purchase order is tied into the plant engineering specifications, it in turn is tied into this, this is a part of our purchase order.

* * *

[252] RE-CROSS EXAMINATION:

Q. (By Mr. Segal) You are not telling me that this is a part of the contract [253] between the independent contractor and General Electric, are you? A. Yes.

Q. In other words, if they breach one of these provisions you could—in other words, if one of these provisions were not lived up to, so to speak, you could go into court on a breach of contract, is that what you are telling us? A. I assume we could.

Q. All right. Let me ask you, referring your attention to this No. 19 general that counsel asked you about, "entrance to property," reads, on page 6 reads, "Entrance to the site to be used by the contractor and his workmen shall be Gate 3-A or another entrance as may be designated by the owner." Is that correct? A. Yes.

* * *

[255] CECIL S. DENTON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Rogers) You are employed by General Electric? A. Yes. Yes, sir.

Q. And how long have you been employed by General Electric? A. Three years, sir.

Q. And you are facilities planner and buyer of the sales and direction department? A. Yes, sir.

Q. How long have you held that job? A. I have been facilities planner for approximately a year and a half and buyer since January 1 of this year.

Q. Now, in your position as facilities planner and buyer are you responsible for getting bids and letting contracts to [256] independent contractors? A. Yes, sir.

Q. Now, on July 28, 1958, and prior to July 28, you had some contracts with Wehr Constructors, Incorporated—a contract with Wehr Constructors, Incorporated, and two with the Logan Company, is that right? A. Yes, sir.

Q. When was the contract with Wehr Constructors let? A. The one with Wehr Constructors was let on July 18, 1958.

Q. Now, is that the only contract which you had and which was being performed on July 28, 1958? A. Yes, sir.

* * *

Q. (By Mr. Rogers) That contract called for the erection of a foundation for an air raid shelter, did it? A. Sir, I would like to clarify a point. It is for, in the industry, what is known as an air shelter.

Q. An air shelter? A. Yes, sir.

Q. And where was this work to be performed? [257] A. On the north truck pad of the central warehouse. The foundation itself is approximately 300 feet north of the north end of the warehouse that you can see on the print.

Q. Now, that work had not been completed on July 28, had it? A. No, sir.

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[259] WILBER GOODFLEISCH a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Rogers) Mr. Goodfleisch, you are employed by General Electric as manager of manufacturing engineering in the household refrigerator department, isn't that right? [260] A. That's right.

Q. How long have you held that position? A. Approximately four and a half years.

Q. Now in your duties in that position, a part of your responsibility is to obtain bids and let contracts to independent contractors, is that right? A. Right.

Q. Now, directing your attention to July 28, 1958, you had contracts let for the household refrigerator department with five different contractors, is that right? At least five? A. Yes. At least five.

Q. Five of those were Service Erection and Machine Company, Garst-Receveur Construction Company, Hatfield Electric Company, Link-Belt Company and Liberty Engineering and Manufacturing Company? A. Correct.

Q. Now, of those contracts, the contracts with Service Erection and Machine Company, Garst-Receveur Construction Company, and Hatfield Electric Company were in the course of performance, is that right? A. Right.

Q. Now, when was the Service Erection contract let? A. It was let early in July. I can give you the specific date if you care to have me look it up.

Q. Early in July of what year? A. 1958.

[261] Q. Can you give us the specific date on that?

Mr. Segal: If you have got it, you tell him, and I will agree with that.

Mr. Rogers: I don't have it.

Trial Examiner: Early in July is sufficient, I think.

Mr. Rogers: All right.

Q. (By Mr. Rogers) When was the Garst-Receveur contract let? A. About the same time.

Q. And when was the Hatfield Electric Company contract let? A. Early in July.

Q. Now, work commenced on the Service Erection contract about the second week in July, is that correct? A. That's correct.

Q. And the Garst-Receveur contract, the first week in July, is that right? A. Or earlier. Around in there.

Q. And the Hatfield Electric Company contract was commenced about three weeks before the strike? A. Correct.

Q. Now, the Service Erection Company contract was for a major conveyor rearrangement job, is that right? A. Right.

Q. The Garst-Receveur Construction Company job was for the construction of a truck dock, is that right? A.

That's right. Incidentally, the same truck dock that was previously testified to.

[262] Q. And the Hatfield Electric Company contract calls for the rearranging of house electrical equipment, is that right? A. Correct.

Q. Now, none of this work had been completed as of the date of the strike, is that right? A. That's right.

* * *

CROSS EXAMINATION by Mr. Segal:

Q. * * * Did Central Maintenance bid on all of these contracts? A. Not on all of them.

[263] Q. Did they bid on any of them? A. Yes.

* * *

[264] Q. Well, I was trying to develop if there were any other jobs upon which, or to which the Central Maintenance submitted a bid [265] during this same period that you told us about the Hatfield Electric Company and Garst-Receveur Company and the Service Erection. A. Yes, I think there were numerous minor jobs that they had submitted bids and also numerous jobs that they had been given orders to proceed on.

Q. And the same question, some of these bids were accepted and some were rejected? A. Yes.

* * *

[267] DAVID FALK a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Rogers) Mr. Falk, you are employed by General Electric as construction engineer, home laundry department, is that right? A. That's right.

Q. How long have you held that position? A. A little over a year.

Q. Now in that position are part of your duties relative to contracting for work required and letting bids to independent contractors and getting bids and letting contracts, is that right? A. That's right.

Q. Now, directing your attention to July 28, 1958, you had several contracts let at that time, isn't that right? A. That's correct.

Q. You had a contract with Henderson Electric Company, Inc., R. J. Heffernan Electrical Contractor, Garst-Receveur Construction Company, George E. Blanford, Inc., Raymond M. Meyer Plumbing and Heating Contractors, Inc., and John L. Zehnder Company, is that right? A. That's right.

[268] Q. Now, work had been commenced pursuant to the Heffernan contract only on July 28, is that right? A. That's right.

Q. When was that contract let? A. In January, 1958.

Q. And when did work commence pursuant to that contract? A. Also, in January, 1958.

Q. Now, that called for the performance of an electrical product control device? A. That's correct.

Q. Where was this work performed? A. In Building 1.

Q. Would that be the manufacturing floor of the home laundry department? A. That's right.

Mr. Rogers: That's all.

One question.

Q. (By Mr. Rogers) Have any of the employees of the contractors, who were doing the work you testified to, performed the work after July 28 when the strike commenced—or after July 27th? A. You mean during the strike period.

Q. During the strike. A. No work was performed during the strike period.

Q. By the contractor personnel? A. By the contractor personnel.

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[273] **Stenographic Transcript of Testimony at Hearing of September 23, 1958.**

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[275] PROCEEDINGS

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[277] JOHN JOHNSON a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Segal) Mr. Johnson, are you an officer of the Respondent Union? A. Yes, I am. I am President of Local 761.

Q. Now, on or about July 27, the Respondent went on strike against General Electric, is that right? A. That's right.

Q. Now, what was the strike about? A. The strike was about 24 unsettled grievances that we had processed through the three steps of the grievance procedure under our contract.

Q. All right. When did the strike end? A. The strike ended on Sunday, August 10, around 9:00 o'clock, 9:00 p. m.

[278] Q. All right, sir. Now directing your attention back to the time when the strike began, when did picketing commence? A. The picketing commenced on Sunday, July 27, around 9:00 p. m.

Q. Please tell the Court what gates were picketed at the General Electric plant. A. We picketed all entrances to the General Electric Appliance Park, all gates.

Q. Do you know those gates by names or numbers? A. Yes, I think I can name them. Gate 2, Gate 3, Gate 3-A, and Gate 4 and Gate 5, and then there is a gate in the back that, as far as I know, has no number on Fagen Bush Lane that is actually closed, we picketed that, too.

Q. Now, were all the gates picketed in the same general manner? A. Yes, we picketed all gates of Appliance Park because we felt there were no difference in any of the gates because in our mind all G. E. employees were allowed to enter all gates.

Q. Now, were the signs the same, or relatively the same, with the same slogan on them or the same sign language on them, the picket signs? A. Yes, they were all practically the same.

Q. All right. I will show you General Counsel's Exhibit No. 2 and ask you to read that inscription off. A. Local 761 on strike, G. E. unfair.

[279] Q. Is that the Gate 3-A? A. That's Gate 3-A.

Q. Now, I think you have told us that all the gates were picketed at the inception of the strike in the same general manner, is that correct, sir? A. That's right, because we had no assurance from the General Electric Company that employees would not be allowed to enter any gate and we still have no assurance from G. E. that they cannot enter any gate of Appliance Park.

Q. Now, yes—Now, pursuant to the State Court restraining order and injunction, pickets were limited, is that right, sir? A. That's right, three at each gate.

Q. And that included 3-A? A. That included 3-A.

Q. And pursuant to that order, so to speak, the picketing continued at all gates with the three pickets, is that correct? A. That's right, it continued at all gates, yes.

Q. Now, the picketing at all the gates began at the inception of the strike and continued up until the time of the restraining order issued by the District Judge for Gate 3-A, is that correct? A. That's right.

Q. And what was the date of that, do you remember, Mr. Johnson? [280] A. I believe it was August 9 that the restraining order was put into effect that was on Saturday, I believe, around 11:00 o'clock, 11:00 a. m.

Q. And in compliance with that order, the pickets were removed? A. The pickets were removed from 3-A, yes.

* * *

Q. (By Mr. Segal) Why were all the gates picketed? A. The reason why the gates were picketed, for this rea-

son, we were on strike against the General Electric Company, we wanted the public to know that we were on strike against the General Electric Company and also to keep the employees of the General Electric out, for them to respect our picket line.

Q. Now, during the strike, was General Electric attempting to run its plant? A. Sure, they had big signs out that said this plant is open, come in, at the various gates. They sent out blue letters, as we call them, letters to their employees, to the community, explaining their side of the story and for everybody to come back to work.

Q. Had there been no contractors or contract employees on the job at G. E., would you have still picketed Gate 3-A? A. Yes, we would have still picketed 3-A for this reason, [281] as I said before we had no assurance from the General Electric Company that employees wouldn't enter this gate, we still have no assurance that they wouldn't be allowed to enter this gate during a strike or at any other time.

Q. Now, you are an employee of the General Electric Company, are you not, sir? A. I am, I am a machine operator at General Electric Company.

Q. Now, you have heard reference to the various bulletins that were allegedly passed out to these individuals named, L-1 through L-8. As an employee—I am referring to General Counsel Exhibits 4 and 5, and 6. I will show you these documents and ask you if you have ever had any knowledge of them as an employee. Look them over, if you haven't seen them. I think you probably looked them over before. A. I haven't. The only time I have seen these was yesterday. Or I seen one of them in the Federal Court last Thursday.

* * *

Q. (By Mr. Segal) I will ask you, sir, if you as an employee [282] knew of the information contained therein, in those bulletins? A. Not until I read some of them yesterday, and the one last Thursday.

Q. All right. Now you are also President of this Local Union? A. That's right.

Q. Now, as Union President, in contrast to your position as an employee, I will ask you the same questions as to knowledge of those bulletins. A. I had no knowledge of them until I seen them as I said yesterday and last Thursday, I seen the one.

Q. As far as the members of the Local are concerned, the members of the Local Union, the Respondent here, did they receive any knowledge, as far as you know? A. To the best of my knowledge, I would say no they didn't receive them.

Q. All right. Did the Union receive any copies of these bulletins? A. No, we did not.

* * *

[283] Q. (By Mr. Segal) * * *

Did the Company at the inception of the strike, or within a few hours after it began, or a day, notify the Union or any of its representatives as to the use to be made of Gate 3-A? A. No, they did not.

Q. All right. During the strike, while the strike lasted, did the Company at any time notify the Union as to the use of Gate 3-A? A. No, they did not.

Q. Now, has the Union, that's the Respondent, ever been given any assurance at any time that the production and maintenance workers who crossed and went into work,

would not use gate 3-A? A. By General Electric, you mean?

[284] Q. Yes. A. No, they have not, not by General Electric or anybody else.

* * *

Trial Examiner: * * * Will the General Counsel concede that during the course of the strike the Company attempted to [285] operate the plant and made a number of efforts to maintain operations?

Mr. Clay: Yes, sir, I think it could be said that the Company indicated that the plant was open, that anyone who had business to perform or work to do at the plant was welcome at the plant.

Trial Examiner: Including striking employees.

Mr. Clay: Including the strikers who wanted—any employee, not strikers, any employee of General Electric who wanted to come to work was free to do so.

Trial Examiner: Does that suit you, Mr. Segal?

* * *

Trial Examiner: What you want is a statement from the opposition to the effect that the Company tried to get all employees to work during the strike and otherwise to transact the plant's business during the strike, isn't that what you want, Mr. Segal?

Mr. Segal: That's correct, sir.

Trial Examiner: Isn't that what you, gentlemen, have offered him?

[286] Mr. Rogers: Yes, sir.

Mr. Clay: Yes, sir.

* * *

[287] Trial Examiner: In addition to that the preceding answer was stricken—in addition to the point made by Mr. Rogers, the preceding answer of the witness was stricken.

You may, if you wish, Mr. Segal, ask the witness if at any time during the course of the strike it was brought to his attention in any way that the Company was notifying employees, strikers and non-strikers, that they should not use Gate 3-A? Do you want to ask him that?

Mr. Segal: All right, sir. Would you repeat that question and make it mine, that the Trial Examiner—

Trial Examiner: You heard, Mr. Johnson?

The Witness: I had no knowledge of anybody receiving such notification.

* * *

[288] Q. (By Mr. Segal) Did the Union receive any—and the officers, [289] and yourself, receive any personal guaranties or assurances from the Company, or any of its spokesmen, that Gate 3-A would not be used by production and maintenance employees? A. I did not receive anything from the Company * * *

[291] Q. (By Mr. Segal) Was there a contractor or were there contractors at 3-A during the strike and the time of the picketing, to identify their personnel? A. A contractor?

Q. The independent contractors, were any of their personnel at Gate 3-A, or any representative for them, from their Company, [292] to identify the contracting employees?

* * *

A. Not to the best of my knowledge I know of no contractor who was there to identify the people—his people.

* * *

[293] Q. (By Mr. Segal) Now, on the first day of the strike did any production and maintenance employees gather around the gates? A. They gathered around all gates.

Q. Including 3-A? A. Including 3-A.

Q. Now, was the Union at any time offered an opportunity by the Company to personally check any contracting employees coming up to Gate 3-A, or any employees coming up to Gate 3-A? A. No, they were not.

* * *

[298] CROSS EXAMINATION:

Q. (By Mr. Rogers) Now, Mr. Johnson, you testified your position with the Union was what? A. President of Local 761.

Q. Now, did you participate in the calling of the strike on July 27, 1958? [299] A. The executive board, which I am chairman of, called the strike, plus after taking a strike vote of the membership.

* * *

[300] Trial Examiner: Now, the Respondent will concede, I believe, that the picket signs were carried by authorized agents.

Mr. Segal: I will, sir.

* * *

[306] Q. (By Mr. Rogers) Now, Mr. Johnson, you testified on direct examination that you felt there was, you and

the Union officers felt that there was no difference between any of the gates out at General Electric and for that reason you picketed them all. A. Like I said, the Union and myself felt like there was no difference between Gate 3-A and any other gate at Appliance Park because we had no assurance and we still have no assurance that G. E. employees would not be allowed to enter this gate.

Q. Are you familiar with Gate 3-A? A. I know where it is at.

Q. How long have you been employed with the Company? A. Almost six years.

Q. Now, what gate do you go in generally? A. I go through Gate 2 and Gate 5 most of the time when I go into the plant.

Q. I see. Now when you go into Gate 2, how do you approach [307] Gate 2? A. Well, I either come down Buechel Bank Road or I come off of the Progress Road, I believe they call it, and down that way. I come in various ways. I never come in the same.

Q. When you come down either Buechel Bank Road or the Progress Road, as you testified, that would bring you past Gate 3-A, would it not? A. Yes, that's right.

Q. So that over the course of the past few years, you have been past Gate 3-A many, many times, isn't that right? A. Oh, naturally.

Q. Now, I will show you a document which has been marked for identification as General Counsel's Exhibit No. 2 and I will direct your attention to a sign appearing therein at the right hand portion of the photograph reading, "Gate 3-A for employees of contractors only, G. E. employees use other gates."

You have seen that sign many times, haven't you, as you have driven by? A. I probably have. I don't remember whether I did or not. I am sure I couldn't have missed it if I have looked at it.

Q. As a matter of fact, you have seen that sign many times, isn't that a fact? A. I probably have. I don't remember reading it. I don't read every sign I pass.

* * *

[308] Q. * * * The reason for the picketing was to prevent G. E. employees from going into work? A. The reason for picketing was because we was on strike against the General Electric Company, and second we wanted the public to know that we were on strike against General Electric and what we was on strike for. Third, was to tell the employees that we were on strike and we hoped that they would respect our picket line and to keep them out.

Q. Now, you also hoped that the employees of the contractors would respect your picket line, isn't that right? A. Naturally. We hoped that everybody would respect our picket line.

Q. And it is my understanding that one of the things that you did during the course of the picketing, either you or other officers and officials of the Union, was to issue passes to permanent persons to go through the picket line, isn't that right? A. We did not deny anybody a pass to go through the picket line.

Q. You issued passes to go through the picket line? A. Sure, we issued passes if they came down and asked for them.

* * *

[309] Q. (By Mr. Rogers) Now, Mr. Johnson, isn't it a fact that one of your hopes with regard to your picketing was that everyone would respect your picket line and that all activity inside Appliance Park would cease? A. As I said a while ago, we hoped that everybody including even the management would respect our picket line.

Q. You hoped that all activity would cease inside the plant? A. We hoped that everybody would respect our pickets, yes.

* * *

Q. (By Mr. Rogers) Mr. Johnson, I hand you a document which has been marked for identification as General Counsel's Exhibit No. 10 and ask you to tell us what that is. A. That is picket instructions that we gave to the pickets that were on the gate.

Q. These were instructions that you gave to the pickets who [310] picketed during the strike in question. A. During the strike, yes.

* * *

Trial Examiner: I receive it.

Q. (By Mr. Rogers) Mr. Johnson, General Counsel Exhibit No. 10 was given to each of the pickets who went out on picket duty. A. It was. It was posted at the Union hall.

* * *

[311] Q. (By Mr. Clay) * * *

[312] Q. In regard to the General Counsel's Exhibit No. 10, the picket instructions, instruction No. 8 reads, I quote: "Discuss the issues that caused the present dispute with those that are misled into crossing the picket line."

Did you want your pickets to discuss anything with people crossing the picket line, other than this No. 8 instruction? A. It says here to discuss the issues that caused the present dispute with those that are misled into crossing the picket line. That means everybody, the pickets that are on the gate [313] when they are on duty or when they are off duty, discuss it with their neighbors, with their minister or with anybody else, or with people crossing the picket line, anybody, to tell them what our dispute is about, why we are out on strike, and why these people shouldn't go into work.

Q. Did that apply to contractors? A. I say that applied to everybody in the whole community, three Falls Cities or anyplace that you could get to talk to people.

Q. And by that you were hopeful of persuading contractors not to come in and their employees not to come in Gate 3-A? A. We hoped that everybody, as I said before, would respect our picket lines, yes.

Q. And you testified I believe, in your direct testimony that you had no knowledge of any discussions by the Company with the Union of the use of Gate 3-A for contractor personnel, is that right? A. That's right.

Q. How long have you been a Union official? A. Well, I have been a Union official since 1953 when we first organized this plant, if you want to call a shop steward an official. I was shop steward for about a year, I was chief—

Q. I mean a president or a vice president of the Union, the one who would have negotiated— A. Well, I was chief steward for three years which a chief [314] steward negotiates with the Company and I have been president for a year. About four years, altogether.

Q. Who would have discussed with the Company questions about Gate 3-A? A. The negotiating committee.

Q. And were you a member of the negotiating committee? A. I have been a member of the negotiating committee for four years.

* * *

[315] RE-DIRECT EXAMINATION:

Q. (By Mr. Segal) * * *

[316] Q. Now, is this the first strike that this local has even called at the General Electric Company? A. It is. It is the first strike that Local 761 of the I. U. E. has called a strike at Appliance Park.

Q. Now, to your knowledge, as your Union's president, have the employees of the General Electric Company, production and maintenance, ever been given any instructions not to enter any particular gate? A. To my knowledge, they have not.

* * *

Q. (By Mr. Segal) Are you familiar with the publication of the General Electric Company known as the "Daily Headliner?" A. I am.

Q. And also some documents which go out which are called "Blue Letters?" A. Yes, I am familiar with the Blue Letters, the Daily Headliner [317] letter.

Q. Do you know whether or not during this period or immediately before the strike, these documents contained any information as to all gates being open in the event of a strike? A. Yes, there were letters sent out and it was out in the "Daily Headliner" that the gates

would be open at Appliance Park and they made no reference to what gates you could come into.

* * *

RE-CROSS EXAMINATION:

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[318] Q. (By Mr. Clay) One other question, Mr. Johnson. In the General Counsel's Exhibit No. 10, the picket instructions, instructions 1 and 2 emphasizes the importance of making a record of any trucking company, PUCO number from the cab of the outfit, to record license numbers of all trucks, cars and other conveyors— A. You are reading two of them, aren't you?

Q. Legibly and report to the Union Hall at the close of your shift. What was the purpose of doing that? A. You read two?

Trial Examiner: Yes, he's talking about paragraphs 1 and 2.

The Witness: One and two?

Q. (By Mr. Clay) Yes, I will read the first and second one: "The license numbers of all—"

Trial Examiner: You needn't read it, it is in evidence.

A. (Continued) The reason for that was because we wanted to talk to these people and explain our side of the story, which General Electric was able to do through their radio, television, advertisements, and talking to the people also. If we explained why we were out on strike and the 24 grievances we had, we was sure that these people would not cross our picket line.

[319] Q. Did you intend to urge that they not cross your picket line? A. We intended to explain to them—

Trial Examiner: You wanted to induce them not to cross again, isn't that right?

The Witness: We wanted to explain to them why we were out on strike and hoped that they wouldn't cross our picket line, yes.

Trial Examiner: The same thing.

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RAY F. KOST, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Segal) Mr. Kost, you are an employee of the [320] General Electric Company? A. Yes, sir.

Q. How long, sir, have you been an employee? A. Approximately seven years.

Q. And in what department or section of the Company do you work at the plant? A. Central Maintenance.

Q. Is that the Central Maintenance that has been heretofore referred to, the Central Maintenance—the same Central Maintenance, the only one? A. Yes, sir.

Q. Now, have you ever gone through Gate 3-A at Appliance Park? A. I have gone through all gates.

Q. Have you been stopped when you went through Gate 3-A? A. No, sir.

Q. How recently have you gone through Gate 3-A? A. I would say, roughly, nine months.

• • •

Q. Now, do you have any special pass or sticker on

your car? A. Yes, sir, I have a sticker stating that I can go through Gates 2, 3, 4 and 5.

Q. And yet you have gone through, on occasions, Gate 3-A? A. Yes, sir.

• • •

[321] Q. (By Mr. Segal) As an employee of the General Electric Company, have you ever received any instructions as to going or not going through Gate 3-A? A. No, sir.

Q. Any meetings or assemblies of employees on Company time or otherwise, at which time the supervisor gave you any instructions as to 3-A? A. No, sir.

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[326] Q. Have you ever done any work on these brick furnaces? A. Yes, sir.

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[327] Q. (By Mr. Segal) What work have you done on the furnaces? Explain to us. A. Well, my buddy working with me, we would put in electrical connections and he would put the brick and mortar around them to seal them in, and lay the brick in columns in the furnace.

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[328] CROSS EXAMINATION:

Q. (By Mr. Rogers) Now, Mr. Kost, you testified with regard to having gone through Gate 3-A. At the time you went through Gate 3-A, were you employed by General Electric? A. Yes, sir.

Q. And you were employed in Central Maintenance? A. Yes, sir.

Q. Now, you stated that you had been issued a sticker for your automobile which permitted you to go through Gates 2, 3, 4 and 5, is that right? A. Yes, sir.

R. F. Kost, for Respondent, Cross.

Q. Now on the occasions you went through the gate, in what manner did you go through Gate 3-A? A. The same manner in which I go through Gate 4 every morning.

* * *

[329] Q. Now, on that occasion when you went through, you testified you went through in your own automobile? A. Yes, sir.

Q. Now, when you went through in your own automobile, what kind of a sticker did you have displayed on your car, if any? A. I don't follow you there.

Q. Did you have your own sticker on display on the car? A. Yes, sir. It was a white sticker, at present. You see, they change stickers every so often.

Q. Now, was that at that time that you went through the gate last, was there a guard on duty? A. Yes, sir.

Q. Did the guard see you? A. Yes, sir.

Q. Did the guard make an effort to stop you? A. No, sir.

Q. Did he recognize you? A. Yes, sir.

Q. How do you know he recognized you? A. I know about two-thirds of the guards over a period of about seven years.

[330] Q. Who was the guard? A. I couldn't name the guard, sir.

* * *

A. They change the guards periodically. There is not a set guard at anytime, you know, specified time. They might have one guard on there today and one tomorrow. There is no particular guard assigned to that gate that I know of.

* * *

[331] Q. Now, how long have you been employed out at Central Maintenance? A. Approximately three years.

Q. And during that period of time you have had occasion to go by Gate 3-A regularly, I presume? A. No, sir.

Q. No, sir? A. No, sir.

Q. How many times have you been past gate 3-A in the three years, to the best of your judgment? A. Well, now, you can't specify that.

[332] Q. More than once? A. Oh, yes.

Q. More than ten times? A. Over a period of seven years which I have been crossing that gate, I would say—well, figure it up 7 times 365.

Trial Examiner: A little louder.

The Witness: Seven times three sixty-five, sir, and very few days I have missed.

Q. (By Mr. Rogers) Very few days you have missed going by Gate 3-A? A. Up until three years ago.

Q. All right. Since three years ago, how many times have you gone by Gate 3-A? A. One hundred, two hundred times.

Q. Now, I show you General Counsel's Exhibit No. 2. Do you recognize that as Gate 3-A, don't you? A. Yes, sir.

Q. Now, calling your attention to this sign over here, it says, "Gate 3-A, employees of contractors only. G. E. employees use other gates." You have seen that before, too, haven't you? A. Yes, sir, I saw it when it was being made.

Q. And that's been posted there how long? A. Oh, I would say roughly eight months, something like that, nine months. I haven't kept track of it.

Q. Eight or nine months, that particular sign? [333] A. I haven't seen the sign at this particular place, no, sir.

Q. Where did you see it? A. In Central Maintenance where it was made.

Q. It was made in Central Maintenance? Did you assist in making it? A. No, sir.

Q. You saw it made? A. I saw it leaning against the wall.

Trial Examiner: Have you been through Gate 3-A since that sign was put up several months ago?

The Witness: I don't believe so, sir.

Mr. Rogers: That's all.

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[335] Q. (By Mr. Clay) • • •

Q. And you can see the sign at the entrance of Gate 3-A, is that correct? A. That's correct.

Q. As you approach it? A. Well, according to what you say, yes. But I have not seen the sign in its present location. It's been that long since I [336] have come through there.

Q. And why did you go through Gate 3-A nine months ago? A. To get into the Park, I would guess. You see I would have to have access to the Park. I don't remember just offhandedly why I went through there.

• • •

Q. How many times did you go through Gate 3-A prior to this incident that you mentioned? A. I would say four or five times.

Q. What was the occasion for your using the Gate that time? A. The same, to get into the Park.

Q. And you mean to say you feel that you can go through Gate 3-A or at—that you can go through Gate 3-A today or at any time during the past seven years that you have been there without being stopped by a guard? A. Well, no. The sign is up there now.

• • •

[337] Q. • • •

Is it your testimony that during the past seven years you could go through Gate 3-A at any time you wanted without being stopped by a guard? A. If the guard knows me, knows my car, I could go through that gate. yes, sir.

Q. You say if the guard knows you? What guard would that be? A. Approximately 50 per cent of them.

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[338] FRANCIS J. SMITH, a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Segal) Mr. Smith, how long have you been an employee of the General Electric Company? A. Nearly seven years.

Q. And what department are you currently working in? A. Building 4, maintenance.

Q. And how long have you worked in that capacity? A. Nearly four years.

Q. You do maintenance in that building only or in all buildings? A. In that building only.

• • •

[339] Q. Well, I will ask you, sir, whether or not you have ever received any instructions as to going or not going into Gate 3-A? A. I have not.

Q. Any written or oral instructions? A. I have not.

Q. I will ask you, sir, whether or not you have ever gone through Gate 3-A? A. I have.

Q. How recently? A. Somewhere around the 15th of July.

Q. Of 1958? A. 1958.

Q. Did you have any special stickers or anything on your car? A. I have two stickers on my car.

Q. What are they? A. One is for Gates 2 and 5, the other, sir, the other sticker is for Gates 2, 3, 4 and 5.

* * *

CROSS EXAMINATION:

Q. (By Mr. Rogers) Mr. Smith, where do you—do you generally drive to work each day? A. I am in a car pool, at the present time I am not with any regular riders, but there are usually five in the car pool, swap and take one day apiece.

[340] Q. And where do the other persons work who ride with you? A. At the time I am speaking of—

Q. At the present time, let's say. A. Buildings 4 and 5.

Q. Now, have you been in the same car pool for a considerable length of time? A. No.

Q. In what kind of a car pool were you on or about July 15, 1958? A. The kind, it was similar, different people.

Q. And where did those people work? A. Building 3, Building 1 warehouse, Building 4 and Building 5.

Q. Were they all G. E. employees? A. They were.

Q. Now, where did—where do you park your car? A. At the present I park in the main parking lot.

Q. In the main parking lot. That would be— A. Between Buildings 4 and 5.

Q. To the east of the manufacturing buildings? A. Yes.

Q. Now, you testified with regard to having gone through Gate No. 3-A. A. Yes.

Q. On or about July 15 of this year? [341] A. Yes.

Q. What time of day was it? A. Three thirty or three thirty-five.

Q. A. M. or P. M.? A. P. M.

Q. And what was the purpose of your going through Gate 3-A, why did you go through? A. We was leaving the Park, I had business at the Buechel Armory, it seemed to be the closest gate, I went through it, took care of my business, went back through it to get to Black Mud to go home.

Q. Black Mud Lane, what is Black Mud Lane? A. That's the extension of Poplar Level over to Fegenbush.

Q. Were you alone when you went through? A. No, sir.

Q. Who was with you? A. A boy by the name of Joseph Breeden, Building 5.

Q. Joseph Breeden? A. B-r-e-e-d-e-n.

Q. Just the two of you. Now, did you know the guard at Gate 3? A. I know him by nickname.

Q. What is his name? [342] A. They call him "Happy," is all.

Q. What? A. Happy.

Q. That was the guard who was on duty at the time

you went through? A. There were at that time, I believe, three guards at the gate.

Q. There were three guards at the gate? A. I believe so.

Q. Now, when you approached Gate 3A, there were—from where were you coming? A. I was coming—going out, sir.

• • •

Q. (By Mr. Rogers) I will show you a document which has been marked for identification as General Counsel's Exhibit 3 and I will ask you to show me, if you can, by which exit you left Appliance Park on the occasion you are talking about. [343] A. Well, I came, was picked up at Building 4, came across Center Street to Second over to the gatehouse, and over to 3-A and out.

• • •

Q. Now, you knew that you weren't supposed to go through that gate, didn't you? A. I did not.

Q. You didn't know that you weren't supposed to come back through that gate? A. I did not.

• • •

Q. I show you General Counsel's Exhibit No. 2 and point out to [344] you definitely, or specifically, the sign which appears thereon, "Gate 3-A for employees of contractors only. G. E. employees use other gates."

Now, is it your testimony that that sign was or was not there when you went through Gate 3-A on that occasion? A. I couldn't swear that it was or wasn't. I didn't look for it.

Q. You didn't see it? A. I didn't.

Q. Is that your testimony? A. It is my testimony.

Q. Now, how many times have you had occasion to go by Gate 3-A in the past three years? A. Very seldom.

Q. Very seldom. Once? Twice? Ten times? How many times? A. Maybe two or three times.

Q. Two or three times. And isn't it a fact that you have seen that sign or a sign similar to that sign posted there at Gate 3-A? A. I have never noticed it.

Q. Never noticed it?

Now, I will ask you the same question that I asked of the witness previously: As you come into Buechel Bank Road from the bypass, you would have a clear view of Gate No. 3-A, the opening to Gate No. 3-A, would you not? [345] A. Yes.

Q. There are no obstructions of any kind that would be in your way? A. No.

Q. So that there would be nothing to prevent your observing any signs or anything of that nature that were in the position where that sign appears to be on General Counsel's Exhibit No. 2, isn't that right? A. That's right.

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[347] THOMAS C. FERGUSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Segal) You are an employee of the General Electric Company? A. I am.

• • •

[348] Q. I will ask you if you have on any occasions observed Mr. Woods going in or out of Appliance Park? A. Yes, sir.

Q Would you please tell the Board what you observed as to which Gate Mr. Woods went in or—out of, or however you saw it? Just tell us what you saw. A. Last Friday at lunch time we were outside where Mr. Woods was hanging doors on Building 5 and I guess it was his lunch time, because he had locked up his tools and got in his truck and left out by the guard shack that goes up by Gate 5.

Q. Did he go out Gate 5? A. He went out the road to Gate 5.

• • •

[351] Q. I see. Now, what time of the day was it? A. It was between 11:30 and 12:00.

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[352] RUDOLPH MILBY a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination:

Q. (By Mr. Segal) Are you an employee of the General Electric Company? A. Yes, sir.

Q. And how long have you been, sir? A. Approximately four years.

Q. Have you ever gone through Gate marked 3-A? [353] A. I have.

Q. Are you an—You are an employee of General Electric, you are not working for any independent contractor? A. No, sir.

• • •

CROSS EXAMINATION:

Q. (By Mr. Rogers) When did you go through Gate No. 3-A? A. The last time I went through Gate 3-A was in January of '58.

Q. 1958? A. Yes, sir.

• • •

Q. Now, during the past nine months since January, have you had occasion to go by Gate 3-A at any time? A. Yes, sir.

[354] Q. More than once? A. I went by there numbers of times.

Q. I call your attention to General Counsel's Exhibit No. 2 and ask you if it isn't a fact that the sign which appears thereon, referring to Gate No. 3-A, "For employees of contractors only and G. E. employees use other gates." I will ask you if it isn't a fact that you have seen that sign in that location? A. I will set right here today and swear that that sign isn't out there right now, after I have heard all these other witnesses swear it is, because I have never to this date ever seen the sign.

Q. You have never seen the sign? A. That's right.

• • •

[355] Trial Examiner: Wait just a moment. I want the witness to tell us the circumstances under which he went through Gate 3-A in January of this year.

The Witness: Well, up until that period, see, I am the chief steward and a member of the executive board for Local 761, and up to—up until that period I was representing both Building 10, the warehouse, and Building 4, and I went in there on occasions almost every day, and sometimes as many as two or

three times a day, because I went backwards and forth into those two buildings and I had to come outside of the Park to get over—in a sense, I mean I had to come outside of the main parking lot in order to get into Building 10, and so on occasions I have used that gate. I would say several times.

Trial Examiner: Now, were you on your way to Building 10 upon the occasions in January of this year when you went through Gate 3-A?

The Witness: Yes, sir.

Trial Examiner: And what was your business in Building 10?

The Witness: As a grievance representative to counsel and advise the stewards in that building.

[356] Trial Examiner: You were having a Union meeting or a meeting with the Company?

The Witness: It would be on the occasions of meeting with the Company on a grievance or going to visit the stewards, counseling and advising and picking up grievances from the lower level to process into the second step. That would be the normal occasions for me going into Building 10.

I do not go in there any longer because, with a different arrangement with the management and the Union they have a representative for Building 10 alone.

Trial Examiner: What time of the day was it in January of this year when you went through 3-A?

A. I would—It was early in the morning.

* * *

[357] Q. Or had you been to Appliance Park previously that day? A. I had been to Appliance Park and went to

the Union office to pick up some material that I wanted to take along with me that day.

Q. Now, where is the Union office located? [358] A. Poplar Level Road, 5153.

Q. Now, is it your testimony that it was more convenient for you to use Gate 3-A than any other gate on that occasion? A. Oh, yes, sir, it was just—excuse me. I came out to the intersection there on Progress Road and turned down Progress Road and was approaching Appliance Park, that being the first entrance off there, I did that several times.

Q. Well, now, isn't it a fact that if you were coming from the Union office on Poplar Level Road the most convenient and the most direct entrance for you to use would be Gate No. 4? A. Gate No. 4 would have been the closest gate, but I never used Gate 4 but twice.

Q. As a matter of fact in order to use Gate No. 3-A, wouldn't you have to travel a substantial distance further to get to Building No. 10 than you would by going through Gate No. 4? A. See, the reason that I go, came to that entrance—

Q. Answer the question, please. A. That's what I am going to try to do.

Trial Examiner: The question is simply whether it isn't a substantial distance farther?

The Witness: It is a substantial distance farther, yes, sir.

Trial Examiner: That's all he asked you.

• • •

[359] Q. (By Mr. Clay) Mr. Milby, what type of sticker is issued to you? A. The sticker issued to me was only

to get into the two main entrances into building coming through, down there, Building 6 and Building 1, the only two my sticker would be permitted.

Q. Where are the two entrances you mean by that? A. Sir?

Q. What are the two entrances you referred to? A. Well, the Building 1 entrance, the big one and what is the number of it, and the one that comes into Building 5, the two main entrances into the Park. I noticed everybody mentioned them by numbers but I never referred to them in that order.

Q. Well, the gate that you come in to get to Building No. 1, is that the main gate that you are referring to, or Gate 3?

• • •

[360] Trial Examiner: The witness indicates entrances to Gates 2 and 5.

The Witness: That's what my sticker would permit me to enter at.

• • •

[361] A. Sometimes I go as much as twice a day.

Q. What gates do you use when you are going to and returning from Union Hall? A. I usually use Gate 5.

Q. Gate 5? A. Yes.

Q. Why is that? A. Well, because working out of Building 4 now, I am referring to now as I operate now, that is the most convenient way for me to go.

And my sticker permits me to go in and out of that gate.

Q. Do you mean to testify that you have no information whatever that you are not to use Gate 3-A? [362] A. I definitely intend to state that for the record.

Q. And you have never seen the sign at the entrance to Gate 3-A, in four years? A. I will—I have never. I will state this: I have never seen the sign to the extent that I read it. I don't say that I haven't noticed a bulletin being up here, but I would certainly sit here today and state that I haven't seen that sign instructing—the nature of the sign being to instruct employees not to enter that gate.

Q. And your sticker says that you are to use Gates 2 and 5, is that correct? A. Yes, sir.

Q. You do know the kind of sticker, you concede that? A. Yes, sir.

* * *

RE DIRECT EXAMINATION:

Q. (By Mr. Segal) Mr. Milby, just one question by way of clarification, in response to one of the General Counsel's questions as to the use of Gate 3-A rather than one of the other gates. A. Yes.

* * *

[363] Q. Actually, sir, my question was why you used the Gate 3-A on this occasion rather than Gate 4, that's the question I was referring to, or any other gate. A. Now, I understand it. The reason I didn't use Gate 4 was because I was instructed by management, Dick Alberstadt, not to use Gate 4. And the only time that I ever used Gate 4 was on two occasions and both of those occasions I was in Mr. Alberstadt's office and one of his assistants was Bill Lynch, or Bob Lynch, who called and told me to come through to—cleared me to come through and go over and go through that gate because he knew I had to go to the Union office to pick up an assistant chief steward who operated in that building by the name of Humphries and

he cleared us to come back through that gate because it would be to our convenience, and he called the guard in advance and we were cleared—those gates. The [364] Company's records will bear out—

Q. That's Gate 4 you are talking about? A. Yes, sir.

• • •

RE-CROSS EXAMINATION:

Q. (By Mr. Rogers) Now, Mr. Milby, do I understand your testimony then that Mr. Alberstadt felt constrained to call ahead to the gate to obtain clearance for you to get out of Gate No. 4? A. Not Mr. Alberstadt. I stated Mr. Lynch.

Q. Mr. Lynch? A. Yes.

Q. Who is Mr. Lynch? A. Mr. Lynch at that time was Alberstadt's assistant, I would say, I mean I don't know what his title was, they never gave us that information. He worked in labor relations alongside where Mr. Alberstadt—along with Mr. Alberstadt. He met with me on various occasions on grievances at the second level and in the department.

Q. All right. Now, on those occasions when a clearance was obtained for you to use Gate 4, when you got to Gate 4, did the guards check you and— A. Yes, sir. I stopped. At all times when I go into the plant I stop and registered into the building and that's the reason I made the statement a few minutes ago that their records [365] would bear out any time I went into Building 10.

Q. Through Gate 4? A. Through Gate 4 and Gate 3-A, or any other gate that I went into the plant other than 2 and 5 would be the only time that I didn't register.

Q. It is your testimony then, as I understand it, that

you registered in on each occasion when you went through Gate 3-A? A. Yes, sir.

Q. And when you left by Gate 3-A? A. Yes, sir. Not —when I left I didn't register out, I would only leave my pass.

• • •

Trial Examiner: Look, Mr. Milby, when you enter the premises of G. E., you don't register in at a gate do you?

The Witness: Not on—I don't register in at Gate 2 or Gate 5.

Trial Examiner: Do you mean that you have to register when you pass any other gate?

The Witness: When I was, when I was chief steward I stopped and left my name and clock number at the guard house when I went into Building 10, at any gate I went in.

[366] Trial Examiner: But you stopped and left your name and clock number at the building not at the gate, isn't that right?

The Witness: No, sir, I left my clock number at the gate.

Trial Examiner: Did you—

The Witness: The guard.

Trial Examiner: Did you give it to the guard orally or did you write?

The Witness: I always got out of my automobile and pulled up to the guard house, get out of my automobile, go in and write my name and clock number on a pad.

Trial Examiner: In January of 1958, at Gate

3-A, did you write your name and clock number on a pad?

The Witness: Yes, sir. At any time I went through that gate I wrote my clock number on the pad.

Q. (By Mr. Rogers) Mr. Milby, once you have written your name and clock number on this pad, you were given a pass, is that my understanding of your testimony? A. Yes, sir.

Q. And when you came back through that gate you dropped off your pass? A. Yes, sir.

Q. What kind of pass was it? A. It was a little old diamond-shaped sticker, it was yellow, I believe, part of it was yellow, and then they also picked up a little button, and both of them had numbers on it that [367] coincided with one another.

* * *

[369] Trial Examiner: And ordinarily there is no guard at Gate 3-A?

Mr. Clay: There is no guard at the—

Trial Examiner: In fact, there is no gate at that point?

Mr. Clay: That is correct. At the intersection of the roadway leading from the plant and bisecting Buechel Bank Road and known as Gate 3-A, we do not have a guard stationed at that particular entrance, except in times—as I think Mr. Gatton testified—of emergency, such as a strike.

Trial Examiner: Now, the guard who has something to do with people entering through Gate 3-A would actually be stationed at the southern end of the—

Mr. Clay: Gate 3.

Trial Examiner: Well, what do they call it, the guardhouse?

[370] Mr. Clay: The guardhouse.

Trial Examiner: The guardhouse of Gate 3?

Mr. Clay: Yes.

• • •

JOHN GATTON re-called as a witness by and on behalf of the General Counsel, in rebuttal, having been previously duly sworn, was further examined and testified as follows:

• • •

Direct Examination:

Q. (By Mr. Rogers) • • •

[371] Q. Now, in the course of the testimony given by Mr. Smith he referred to an occasion when a guard known as "Happy" permitted him to gain entrance to Appliance Park through Gate Number 3-A. Do you recall that testimony? A. Yes, sir.

Q. Will you state what the fact is, for the record, with regard to whether or not any of the guards employed by General Electric, under your supervision, are known by the nickname of "Happy"? A. I know of no guard known by the name of "Happy."

• • •

[372] Trial Examiner: Mr. Gatton, has it ever come to your attention that a guard permitted a G. E. employee to enter through Gate 3-A?

The Witness: No, sir, it has not.

Trial Examiner: Do you have a rule with respect to disciplinary action toward a guard who permitted an employee to enter through that gate?

A. Yes, sir, he—

* * *

Trial Examiner: Is it a rule which has been discussed in meetings of supervision with guards?

The Witness: Yes, sir.

Trial Examiner: When was the last time there was such a discussion?

The Witness: Shortly before the strike, the last—

Trial Examiner: Was the discussion in connection with the [373] forthcoming strike?

The Witness: Well, it was due to the general labor unrest at that particular time.

Trial Examiner: I will overrule the objection. What is the rule?

The Witness: The rule is if a guard doesn't carry out his assigned duties on that gate—and one of the assigned duties is to prevent G. E. employees from using Gate 3-A,—disciplinary action would be taken. The disciplinary action would, if it was a first time, would be a written contact.

* * *

Trial Examiner: A written contact? You mean a written reprimand?

The Witness: Yes, sir. That goes with his record.

Q. (By Mr. Rogers) Mr. Gatton, now will you state for the record whether or not there is a definite disciplinary

system with regard to the guards at Appliance Park?' A. Well, yes, sir, there is a regular disciplinary system.

Trial Examiner: What is that system?

The Witness: If it is a minor infraction, in our particular people's case, failing to carry out their rules and regulations, the first time they are given the benefit of the doubt, they receive what we refer to as a contact. If they persist they receive what is known as a warning notice, and if that continues [374] it subjects that individual to dismissal.

Q. (By Mr. Rogers) Now, Mr. Gatton, will you state for the record whether or not in the performance of the normal duties the guards under your supervision are to make a report to you of any unusual incident occurring at any of the gates? A. Yes, sir, any unusual incident is reported.

Q. And will you tell us whether or not an attempt by a General Electric employee to go through Gate Number 3-A would be the subject of any such report? A. Yes, sir, it would.

Q. And will you state again, for the record, whether or not in the course of your employment, and the performance of your duties, you have ever received such a report? A. No, I have never received such a report. Most of our people, when they are stopped and they receive an explanation of the rule, they voluntarily turn around and leave, consequently we don't feel that employee should be penalized through his own ignorance. No written notice is made on that unless he insists on going through, then it is. But we have never received one.

Q. Now, I would like to have you state again for the record whether or not the guards have been, in the past,

and prior to July 28, 1958, advised of their duties with regard to Gate Number 3-A? A. Yes, sir, they have, on numerous occasions.

[375] Q. And will you state again for the record what they are instructed to do with regard to gate 3-A? A. They are instructed to permit contractor employees only to use Gate 3-A.

Q. What, if anything, is their instruction with regard to checking persons going through Gate 3-A? A. They have been instructed to check those individuals, however, if they recognize them on sight, and know that it is a *bona fide* contractor employee, that's good enough.

Q. Now, Mr. Gatton, did you hear the testimony of Mr. Milby this morning? A. Yes, sir.

Q. Did you hear him testify with regard to stopping at Gate Number 3-A and registering and being issued a pass to go through Gate 3-A? A. Yes, sir.

Q. Now, will you state what the fact is with regard to whether or not there is any such system of registration provided for as testified to by Mr. Milby? A. There is no registration system set up at Gate 3 for G. E. employees entering Gate 3-A.

Trial Examiner: Is there any registration system at Gate 3, at the guardhouse, for G. E. employees who enter Gate 3?

The Witness: Yes, sir.

Trial Examiner: Well, if an employee of G. E. entered [376] Gate 3-A, or Gate 3, either one, there would only be one point of registration?

The Witness: That's correct.

Trial Examiner: At the guardhouse of Gate 3, isn't that right?

The Witness: That's correct, sir.

Q. (By Mr. Rogers) Mr. Gatton, will you state for the record whether or not you have ever had any report from any of the guards under your supervision with regard to the use of Gate 3 by any Union stewards? A. Yes, sir, there was an occasion that came up.

Q. Will you tell us about it? A. I would say nine months to a year ago, where the Chief Steward and the Assistant Chief Steward were cleared to go from Building 4 to the warehouse to handle Union business in that area, and they were permitted to use Gate 3; and they were also permitted to use Gate 4.

* * *

[380] CROSS EXAMINATION:

* * *

[382] Q. (By Mr. Segal) Now, you told us that you do not personally know of any guard by the name of Happy, is that right? A. No, sir, I do not.

Q. What about a nickname? A. By nickname, either.

Q. You are not telling us that there are not any guards who are called by men "Happy", or nickname "Happy"? A. To my knowledge I don't know a guard called that.

Trial Examiner: You mean insofar as you know?

The Witness: So far as I know, to my knowledge, no, sir.

Q. (By Mr. Segal) So it is obviously possible, isn't it, that some of the guards are known as "Happy," or one guard may be known as "Happy"? A. Yes, sir, that would be possible.

* * *

Discussion.

[385] Trial Examiner: There have been rulings on all other exhibits except General Counsel's 4, 6 and 9.

I have no problem now about General Counsel's Exhibit 4 as being admissible for the purpose of establishing a particular rule or rules, although the record is clear that the document itself was not circulated among the production and maintenance employees. • • •

[387] Mr. Rogers: From a check of the testimony of other witnesses in that transcript, it is developed that the Exhibit Number 2 referred to by Mr. Gatton in the Federal District Court case is the same document as General Counsel's Exhibit Number 5 in this proceeding, and Exhibit Number 1 referred to by Mr. Gatton in the Federal District Court proceeding is General Counsel's Exhibit Number 2 in this proceeding.

• • •

399 Trial Examiner: All right.

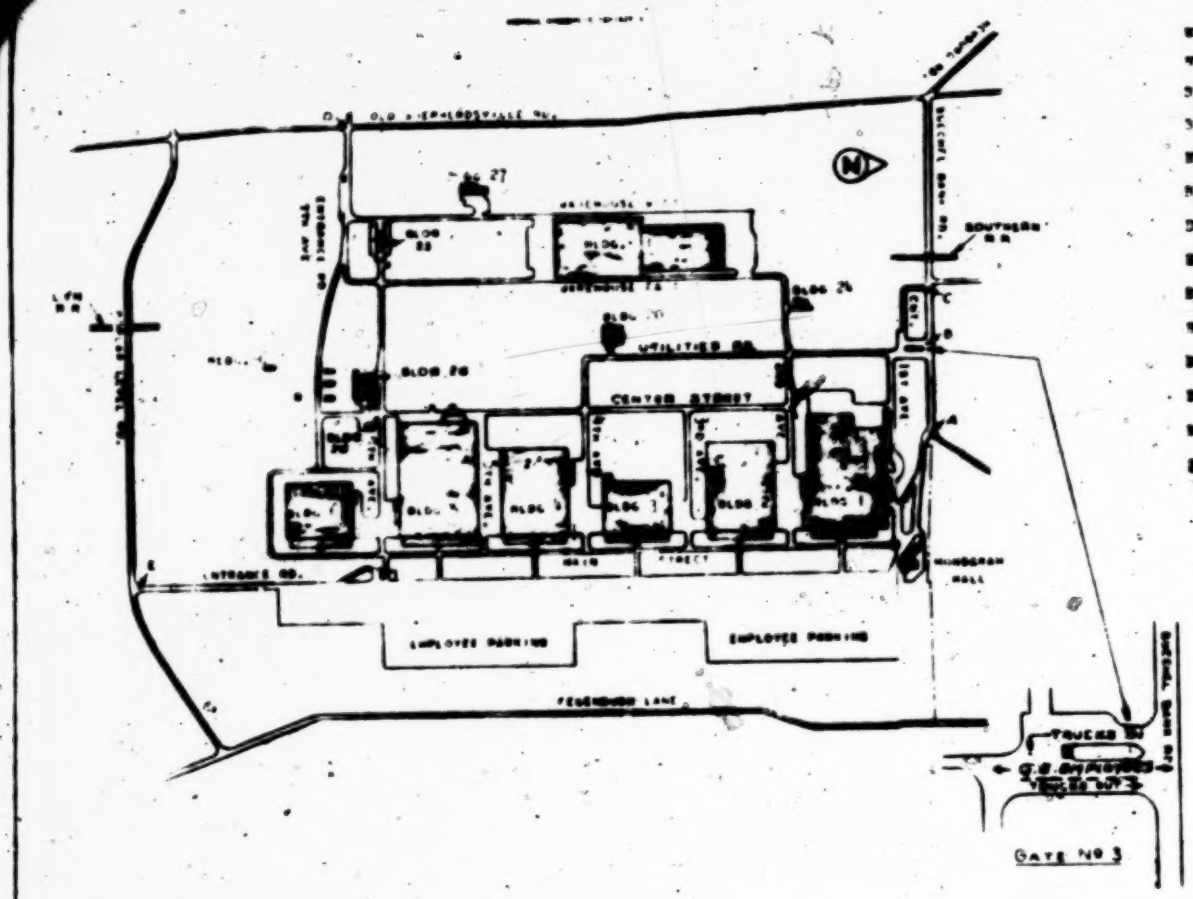
I want to ask the question of Mr. Rogers and Mr. Clay:

We have testimony here that finished products are removed by truck through Gate 3, and we have now an agreement of counsel that raw material is brought in by truck through Gate 3.

Mr. Clay: And 4.

• • •

General Counsel's Exhibit 2



LEGEND

Bldg. # 1 - Home Laundry
Bldg. # 2 - Range
Bldg. # 3 - Dishwasher, Disposall
Bldg. # 4 - Household Refrigeration
Bldg. # 5 - Household Refrigeration
Bldg. # 6 - Room Air Conditioner
Bldg. # 10 - Warehouse
Bldg. # 20 - Boiler House
Bldg. # 24 - Industrial waste Treatment Plant (I.W.T.)
Bldg. # 26 - Maintenance Bldg.
Bldg. # 27 - Salvage Bldg. & Incinerator
Bldg. # 29 - Plant Protection Bldg.
Bldg. # 56 - Nursery Bldg.
Bldg # 23 - Mill Water Pump House

A - Gate No 2 : Employees & Visitors
B - Gate No 3 : See Detail
C - Gate No 3A : Contractors Only
D - Gate No 4 : Trucks & Employees
E - Gate No 5 : Employees

GENERAL ELECTRIC CO.
APPLIANCE PARK PLANT ENGINEERING
PLOT PLAN C BURNFIELD
B-65942-4134-A

General Counsel's Exhibit 4.

May 29, 1957

Distribution L-1 through L-8
Messrs. RC Alberstadt
BB Ballance
WM Duffy
CF Eckert
AA Jackowicz
LC Welsh

SUBJECT: Appliance Park Windshield Sticker Identification System—1957.

This is to advise that our existing windshield sticker identification system for Appliance Park vehicles has been revised to meet 1957 requirements.

The revision conforms absolutely with prerequisites of all articles contained in Plant Protection Bulletin #17, which was issued after consultation and agreement with the General Managers, in 1956.

Stickers are issued on a time and frequency basis of:

Permanency ..... Class 1
Semi-permanency ..... Class 2
Temporary & Restricted Trip ..... Class 3

and * * * certain "types" of roving and parking privileges, relating to each classification of the stickers, are necessary.

Attached herewith, are three pages describing each sticker classification and subsequent sticker "type", in detail * * * for your information and guidance.

Issuance of the new stickers will begin June 24th, with distribution being handled in the manner described for each type. Issuance period shall expire July 15th, at which time

the existing windshield sticker identification system will become obsolete to be replaced *in toto,* by the new.

If you have any questions, call D. L. Powell, Chief-Plant Protection, EXtension: 2110.

H. J. BENZIE,
Manager,
Plant Protection & Communication.

TIME & FREQUENCY BASIS FOR ISSUANCE

PERMANENT (CLASS 1) Only	SEMI-PERMANENT (CLASS 2) Only	TEMPORARY & RESTRICTED TRIP (CLASS 3) Miscellaneously
Appliance Park G. E. Employees	Contractor Personnel Contractor Trucks & Equipment	AP-GE Employees Outside Delivery & Pick-Ups (GE) " " " " (Contr) Service Representative (GE) " " (Contr) Vendors (GE) " (Contr) Public Utility Representative Union Representative (Contr) " " (After Hours - GE) Medical & Physically Handicapped (GE)

SHAPE

Rectangular (CLASS 1) (Rounded Corners)	Oval (CLASS 2)	Round - General Electric Employees (CLASS 3) Diamond - All Others (CLASS 3)

MATERIAL

Decal Sticker (CLASS 1) (Numbered)	Plastic-Suction Cup (CLASS 2) (Numbered)	Plastic-Suction Cup (CLASS 3) (Numbered)

SIZE

2 1/2" x 1 1/2" (CLASS 1)	2" x 3" (CLASS 2)	Round - 2 1/2" Diam. (CLASS 3) Diamond - 3" x 4 1/2" (CLASS 3)

LENGTH OF ISSUANCE

2 (CLASS 1) Job Employment Period and/or Annually & Change of Vehicle by Assignee	(CLASS 2) Period of Contract or Period of Temp. Need or visit, extending beyond 8 hours. Change of Vehicle by Assignee	(CLASS 3) Diamond - (Blue) More than 1 trip (one or more days) " - (Yellow) 1 Trip (1 - 8 Hours) Round - Period of temporary need or visit as indicated by request.

TYPES ISSUED IN EACH CLASS (SEE PAGES 2 and 3 FOR TYPE DESCRIPTION)

(CLASS 1) Types	(CLASS 2) Types	(CLASS 3) Types
I; II (b); III (a); III (b);	II (a); III (c);	ROUND I; II (b). III (d) DIAMOND IV (Blue); IV (Yellow)

General Counsel's Exhibit 4.

APPLIANCE PARK WINDSHIELD STICKER IDENTIFICATION SYSTEM

TYPE PRIVILEGES:

TYPE I. ROVING-UNLIMITED-PARKING (Ref: Par. (1) Page 2, Plant Protection Bulletin #17).

Issued in Class 1 and Class 3 shapes to 4th level supervision and above, or equivalent, either local or visiting General Electric employees, on time need and job basis. Issued by Manager-Plant Protection & Communication upon receipt of authorization from proper source. Numbered serially. Color: Red and yellow diagonal combination with blue lettering.

Indicates privilege of entering premises at any time with passengers through any G. E. Gate (use of contractor gates prohibited). Indicates privilege of driving anywhere on premises and parking any place necessary. Members of family also permitted to drive cars identified with this sticker in and out of all G. E. Gates, for passenger pick-up purposes. Non-transferable.

TYPE II.

(a) *ROVING-LIMITED-PARKING (CONTRACTOR VEHICLES).* Ref: Par. (6) Page 3, Plant Protection Bulletin #17.

Issued in Class 2 shape, size and material to contractor personnel, *et cetera*, as listed on Page

General Counsel's Exhibit 4.

1, for a job requiring roving privileges. Issued by Chief-Plant Protection following receipt of written authorization for issuance from G. E. Superintendent (or higher) of department concerned with the instant contract. Expires upon termination of contract. Contractor must return permit to Plant Protection upon transfer or termination of employment and/or contract. Numbered serially. Color: Red background with black lettering.

Indicates parking permitted near the job in proper manner. Permits brief use of vacant visitors spaces between buildings, and utility lot spaces, on necessity basis. Permits roving of premises on job need basis and driving on Main Street prohibited except for job need basis. All passengers shall produce proper G. E. contractor identification when using gates. Vehicle is subject to security inspection at any time. Cannot enter premises via contractor gates when carrying G. E. employees, and shall enter premises via contractor gates, only, at all times. Non-employee members of family cannot use to enter premises. Record of Liability Insurance required. Non-transferable.

(b) Issued in Class 1 and Class 3 shapes as indicated on Page 1 to Local General Electric personnel "exceptions" as outlined by Par. (3) Page 3, Plant Protection Bulletin #17, on job need basis. Issued by Manager-Plant Protection & Communication. Request for issuance must be ini-

tiated by a Section Manager. Numbered serially. Color: Red background with blue lettering.

Permits use of any G. E. Gate (use of contractor gates forbidden). Permits roving on premises during regular shift and overtime hours but use of Main Street at any time prohibited except on job need basis. Permits near-the-job parking in proper manner. Permits brief use of vacant visitor spaces between buildings and Utility Lots, on necessity basis. Members of family also permitted to drive cars identified with this sticker in and out of all G. E. Gates for passenger pick-up purposes. Employee or other identification required of all passengers and driver. Subject to security inspection at any time. Expires upon transfer or termination of employment and must then be removed from windshield. Non-transferable.

TYPE III. PARKING AREA PERMIT (Restricted to specific General Electric employees-Main Parking lots).

(a) *NORTH, INTERMEDIATE & SOUTH LOTS (ONLY).*

Issued in Class 1 shape to General Electric Appliance Park employees only. Issued by Employees Services Office (Per Building) and Plant Protection. Numbered serially. Color: White background with blue lettering.

Indicates privilege of entering via Gates 2 and 5 all shifts, to park in North, Intermediate and

South Main Parking Lots. Subject to security inspections at all times. Expires upon termination of employment (or annually) and must then be removed from windshield: Members of family may drive on to premises with this permit, via Gates 2 and 5. Non-transferable to other vehicles.

May 29, 1957 Page 3

APPLIANCE PARK WINDSHIELD STICKER IDENTIFICATION SYSTEM

TYPE III.

(b) *UTILITY BUILDING LOTS (ONLY)*

Issued in Class 1 shape to General Electric Appliance Park Utility Building employees and their car pool riders. Issued by Chief-Plant Protection, following receipt of written authorization for issuance from G. E. Utility Building Superintendent. (NOTE: When issued to car pool members normally using the North, Intermediate and South Lots, shall be combined with sticker Type III (a) to indicate transit privileges only through Utility areas, and required parking in main lots. Driving on Main Street prohibited at any time.) Numbered serially. Color: White background, blue triangle and blue lettering.

Indicates privilege of entering premises via Gates 2, 3, 4 and 5 during regular shift hours or for overtime work. Permits parking only in

assigned Utility Lot. Prohibits roving. Non-employee members of family, and employee members of family, not assigned to pools in Utility areas are denied privilege of driving car identified with this permit into Utility areas, but may make passenger pick-ups with same on Main Parking Lots via Gates 2 and 5. Driving on Main Street prohibited except on job need basis. Subject to security inspection at any time. Expires upon transfer or termination of employment and then must be removed from windshield. Non-transferable.

(c) *CONTRACTOR LOTS (Restricted Specifically To Contractor Lot Parking Only).*

Issued in Class 2 shape, size and material to contractor personnel, et cetera, as listed on Page 1, with jobs *not* requiring vehicular roving privileges. Issued by Plant Protection Department at this office (Building #28) and Gate House #3, upon authority of contractor supervision. Expires upon termination of contract, transfer or termination of employment, at which time must be turned in to Gate Guard (3) upon final exit. Numbered serially. Color: White background with black lettering.

Indicates parking permitted in specified contractor lot only. Vehicular roving prohibited. Driver and all passengers shall produce proper G. E. contractor identification when entering gates if requested. Vehicle subject to security

inspection at any time. Cannot enter premises via contractor gates while carrying G. E. employees, and shall enter premises via contractor gates, only, at all times. Members of family and friends denied privilege of entering premises with this sticker. Non-transferable.

(d) *RESERVED PARKING, TEMPORARY—Medical.* (Ref: Par. (2) Page 2, Plant Protection Bulletin #17).

Issued in Class 3 shape, size and material. Issued by Manager—Plant Protection & Communication usually upon advice of physician or Central Medical Dispensary, as especially adaptable to temporary medical cases. Issuance only on short-time, temporary basis. Numbered serially. Color: White background with Red Cross in center and blue lettering.

Indicates privilege of entering premises via Gates 2, 3, 4 and 5. Driving on Main Street prohibited. Permits parking in vacant visitor spaces between buildings. Subject to security inspection at any time. Members of family cannot drive car identified with this permit anywhere on premises except main lots. Must be turned in to Manager—Plant Protection & Communication upon termination of need. Non-transferable.

General Counsel's Exhibit 5.

TYPE IV. *RESTRICTED TRIP PERMITS.*

Issued as indicated on Page 1, Class 3. In yellow color for 1-trip purpose; in blue color for more than 1-trip. Permits use of shipping and receiving areas; other loading and unloading areas; use of Utility Parking Lots; visit or parking space between buildings. Issued by Guards at Gates 3 and 4 through Gate Register record after telephone clearance by proper supervision. Chief—Plant Protection will instruct Gate Guards to issue the blue pass for period extending beyond one day, upon authorization of a department superintendent or higher.

General Counsel's Exhibit 5.

SUBJECT: PLANT PROTECTION BULLETIN #9—APPLIANCE PARK, KENTUCKY—January 20, 1954

Procedure for Handling General Electric Direct Contractors Through Special Gate 3A

MESSRS:

LW Atchison	R Johnson
HJ Benzie	GJ Kane
H Bernadt	CW Kaebnick
HH Bixler	GF Kelley
EH Boddy	JM Kite
RF Bowen	JL Knight
GH Boyles	A Lindemeyer
WL Breault	WH Manvel
M Brown	LH Means

General Counsel's Exhibit 5.

WE Casey	JW McNairy
F Cassell	K Muellerstein
JW Coburn	HA Oliphant
PR Cosby	RF Osborn
JJ Cone	JA Patterson
NJ Curlee	BF Peterson
WL Clay, Jr.	JR Poteat
HL Disco	CK Rieger
HB Donley	
JK Driscoll	CA Rystogi
JH Erikson	JE Ryan
CM Fair	RS Schmitz
RW Fillback	GM Sheehan
EJ Fisher	JJ Slattery
EE Folsom	TJ Snodgrass
LO Geier	HE Stocking
GW Grant	LH Strobel
WL Goodfleisch	LU Sisson
JH Goss	CE Sonnemann
RA Guernsey	WM Timmerman
EM Haines	CD Thompson
GC Henry	JW Vonderheide
DR Hughes	PA Wassmansdorf
HT Hulett	WC Watson
GS Hill	LC Welsh
AJ Eilers	WC Watson
HB Miller	FM Welther

The purpose of this bulletin is to facilitate the ingress and egress of GE Direct Contractors' personnel at Appliance Park through Special Gate #3-A and to improve security

measures for controlling the outgoing materials, tools and equipment that are used by these Direct Contractors. In the event of labor difficulties with the various AFofL Craftlocals this separate entrance gate for Direct Contractors' employees should also minimize the possibility of picketing our regular entrances, Gates #2, #3 and #5 used by GE employees. This latter gate was previously designated as Gate #4 in Plant Protection Bulletin #8 dated January 5, 1954.

In this procedure the term "General Electric Direct Contractors" means a direct contractor other than Turner-Struck. All subcontractors of the General Electric Direct Contractors are also covered by this instruction.

1. The names of all present and future General Electric Direct Contractors and their employees engaged in performing work at Appliance Park should be given to the Plant Protection Section in writing by the Plant Engineering Section of the Appliance Park Project Department.

2. All GE Direct Contractors and their subcontractors before starting work will secure their GE Contractors Identification Badges and Car Stickers by coming through GE Direct Contractors Gate #3-A and stopping at GE Guard House #3. They will be given a copy of the following company rules to which they will be subject while working at Appliance Park. These rules stipulate strict adherence on the part of the contractors to our fire prevention regulations governing all welding and cutting operations.

General Counsel's Exhibit 5.

CUTTING AND WELDING PERMIT

After the supervisor of the GE Direct Contractor and the GE Dept. Supvr. where the work is to be done have made certain that conditions are safe, the operator shall then be given a signed permit by the GE Dept. Supervisor. No work shall be permitted without a written permit. By observing this procedure, serious fire hazards will be greatly reduced.

– 2 –

A sample permit form that is being used successfully by many large industrial plants is shown below:

General Electric Co.—Appliance Park, Ky.

GE Direct Contractor & Subcontractors Permit For Cutting & Welding with Portable Gas or Electric Equipment. Good only for the location and time shown below.

Return this permit when job is completed to the GE Supvr. who authorized the work.

DATE .....

TIME STARTED ..... FINISHED .....

BUILDING ..... FLOOR .....

BLDG. COLUMN LINE DESIGNATION .....

DEPARTMENT .....

NATURE OF JOB .....

.....

.....

OPERATOR .....

General Counsel's Exhibit 5.

All fire precautions listed on reverse side of this permit have been complied with and permission is given for this work.

SIGNED .....
Contractors Supv. in Charge of Welding

SIGNED .....
GE Dept. Supv. Where Work is Being Performed.

(See other side)

Form No. MA ....

Precautions against Fire to be complied with by the Welding Operators, the GE Department Supervisors, and the GE Direct Contractors' Supervisors.

CHECK X ITEMS BELOW

1. Obtain a written permit before using portable cutting or welding equipment anywhere in the plant except in permanent safeguarded locations. ....

2. In areas that are equipped with sprinklers, the GE Dept. Supvrs. should contact the Plant Protection Section to make sure that the sprinklers are in operating condition. ....

3. Before welding operations are started, sweep floor clean, wet down wooden floors, or cover them with sheetmetal or equivalent. When doing outside work, prevent sparks from entering doors or windows. ....

General Counsel's Exhibit 5.

4. Move combustible materials 35 feet away; cover what cannot be moved with asbestos curtains or sheet metal, carefully and completely. ....

5. Station man with hose extinguishers or fire pails to watch sparks and see that they do not start fire. ....

6. After completion, watch scene of work a half-hour for smoldering fires, and inspect adjoining rooms and floors above and below. ....

7. Do not use cutting & welding equipment near flammable liquids, or on closed tanks which have held flammable liquids or other combustibles. Remove inside deposits before working on ducts. ....

8. Keep cutting & welding equipment in good condition. Carefully follow manufacturer's instructions for its use and maintenance. ....

– 3 –

2a. The Plant Engineering Section of Appliance Park Project Department will instruct all personnel of the GE Direct Contractors and their subcontractors, to enter and leave Appliance Park through special Gate #3-A located approximately 150 yards West of the entrance of GE Gate #3 on Buechel Bank Road. The entrance to this gate will have signs reading "ENTRANCE AND EXIT GENERAL ELECTRIC DIRECT CONTRACTORS ONLY". *This gate will be open from 6:00 AM to 10:00 PM, Mondays through Fridays.*

3. If any GE Direct Contractors desire to enter or exit through this special gate, when it is closed, they should

use the outside telephones located on the south side of #3 Guard House or at the #3-A entrance gate, and dial Plant Protection Headquarters, EXtension 2222. A guard will then be dispatched to unlock the gate as soon as possible. There will be a sign posted over the telephone advising GE Direct Contractors' personnel of this procedure.

4. All personnel of GE Direct Contractors and their subcontractors are to park their cars in a special parking lot which *will be located in back of Building #2, west of Main Street.* This lot will accommodate approximately 100 cars. At a future date a similar parking lot will be located in back of Building #4, west of Main Street in a portion of the parking lot which is now used by the Turner-Struck Construction Company and their subcontractors. GE Direct Contractors and their subcontractors will not be permitted to drive their cars and/or trucks in any other location except the two mentioned above, and shall not be permitted to transport or ride any other individuals other than properly authorized and badged GE Direct Contractors' personnel in and out of GE Direct Contractors Special Gate #-A.

5. The G.E. Department Supervisor where the work is performed or Plant Engineering Section Representative shall provide the GE Direct Contractors *with properly signed GE Material Gate Passes whenever it is necessary for them to remove material, tools or equipment from Appliance Park.*

6. Any General Electric Supervisor or Foreman that observes an unsafe welding and/or cutting operation has the authority to immediately stop the operation by doing the following:

General Counsel's Exhibit 5.

a. Give a written notice (Form MA. . . .) to the person or persons who are doing the unsafe welding. The notice to be in duplicate stating as follows:

Date ....., TIME .....,
LOCATION ....., BLDG. .....,

Welding operation of the ..... (Name) Company is to stop immediately until G. E. Plant Protection Section is contacted and permit reinstated.

SIGNED .....
(Full Name of GE Supvr. or Foreman)

Badge No. ....., Department .....,

b. GE Supervisor or Foreman shall give the original to the person or company involved, and shall keep the duplicate copy.

– 4 –

c. GE Supervisor or Foreman shall immediately contact GE Plant Protection and explain the condition or situation to them. GE Plant Protection shall then make an immediate inspection and see that the proper and necessary regulations and precautions pertaining to welding and/or cutting are properly and rigidly adhered to.

7. A contractor, when retained by the General Electric Company must give at least 48 hours advance written notice to the G.E. Department Supervisor where the work is performed or Plant Engineering Section Representative, and the time the work will be completed. On receiving such notice the Supervisor shall immediately inform the Guard

at GE Gate #3 of the time the job will be completed and instruct the guard to obtain all identification badges and parking permits from the contractors' employees who leave the park after the designated time. The contractor shall pay, as liquidated damages, the sum of one ($1) dollar for each identification badge and automobile parking permit that is not surrendered by his employees when due.

E. W. ERNST,
APPLIANCE PARK PROJECT,
Cherokee 7511, EXtension 438.

EW Ernst:mae

General Counsel's Exhibit 7.

COPY

December 27, 1956

PLANT PROTECTION BULLETIN #18
SUBJECT: Separate Gates for Contractors and General Electric Employees.

Plant Protection Bulletin #9, issued January 20, 1954, sets forth procedure for handling contractors through special gate #3A, our Permanent Contractors entrance. That Bulletin also explained the reason for this separate gate.

Since that Bulletin was issued, Gate #6, Temporary Contractors entrance, has been added and this is also strictly a contractors gate. Gate #6 (Temporary Contractors) connects with Poplar Level Road Extension and is intended for the use of contractor personnel engaged in the construction of Building #6.

General Counsel's Exhibit 7.

It is important that all contractor personnel and vehicles, including truck deliveries of contractor material, enter and leave Appliance Park via Gates #3A (Permanent Contractors) or #6 (Temporary Contractors), depending upon where contractor personnel is working or the destination of material to be delivered. Contractor personnel and trucks carrying contractor material will not use any other gate at any time.

It is equally important that General Electric employees entering and leaving Appliance Park do not use Gates #3A or #6. Please make certain that all General Electric personnel under your supervision understand this. This matter is extremely important and it will be appreciated if this is brought to the attention of all employees without delay.

H. J. BENZIE, Manager,
Plant Protection and Communication.

Distribution: L-1, L-2, L-3, L-4, L-5, L-6
Lt. JL Gatton Jr.
Lt. WP Wilson
Lt. EJ Keiter
Guard Ben Jones
Capt. CD Thompson

General Counsel's Exhibit 10.

General Counsel's Exhibit 8.

* * *

19. ENTRANCE TO PROPERTY

The entrance to the site to be used by the contractor and his workmen shall be Gate 3A or another entrance as may be designated by the owner.

* * *

Page 6

General Counsel's Exhibit 10.

From Gate No. 5 1:20 P. M.
Howard R. Muttor
Rec July 30, 1958

PICKET INSTRUCTIONS

PLEASE READ CAREFULLY!!

1. Some trucks have crossed the line. It is of utmost importance that a positive description of the outfit and *most important*, record the name of the trucking company and P U C O number from the *cab* of the outfit. This information should be turned into the Union Hall *immediately.*
2. *License numbers* of all trucks, cars and other conveyors *should be recorded carefully and legibly* and reported to the Union Hall at close of your shift.
3. Be sure of positive identification when recording persons names; these too should be reported to the Union Hall at close of your shift.

General Counsel's Exhibit 10.

4. Above all, conduct yourself as a lady or gentleman. The eyes of the public are upon you.

5. No drinking of intoxicants should be permitted while on duty or anyone reporting for picket duty under the slightest influence should be removed from picket area.

6. Do not park your car in the roadway.

7. G. E. will probably employ the services of professional strike breakers and goons, stand your ground unified in a fight to the end for justice.

8. Discuss the issues that caused the present dispute with those that are mislead into crossing the picket line.

9. Be prompt to relieve pickets on duty. If everyone does his or her part the job will not be difficult.

10. Trace rumors before repeating them as the Company will create them in order to divide our united strength.

Fraternally yours,

JOHN JOHNSON, *President,*
Local 761 IUEAFL CIO.

Prehearing Conference Stipulation.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 15,025.

Pursuant to Rule 38 (k) of the Rules of this Court, the parties subject to the approval of the Court, do hereby stipulate and agree to the following with respect to the issues, and the dates for the filing of the briefs and joint appendix;

I.

STATEMENT OF THE ISSUES

Whether, under the circumstances of this case, the Board properly concluded that petitioner by *picketing* Gate 3A of the General Electric "Appliance Park" plant at a time when General Electric was engaged in a labor dispute with the petitioner violated Section 8 (b) (4) (A) of the National Labor Relations Act, as amended.

II.

THE BRIEFS AND JOINT APPENDIX TO BRIEFS

1. The parties shall, on or before September 10, 1959, designate the portions of the record to be printed in a Joint Appendix. Such Joint Appendix shall be filed on or before October 2, 1959.

2. Petitioner's brief shall be filed on or before November 9, 1959.

3. Respondent's brief shall be filed on or before December 7, 1959.

4. Petitioner's reply brief, if any, shall be filed on or before December 24, 1959.

5. It is further agreed that either party and the Court at or following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed to the same extent and effect as if they had been printed, or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental Joint Appendix if the Court so directs.

Dated at Washington, D. C. this 26th day of August, 1959.

BENJAMIN C. SEGAL,
Counsel for Petitioner.

MARCEL MALLET-PREVOST,
Counsel for the National Labor Relations Board.

Order.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,205. September Term, 1958

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Before: Washington, Circuit Judge,
in Chambers.

Upon consideration of the prehearing stipulation submitted by counsel for petitioner and respondent, it is

ORDERED that the stipulation is approved and that the Clerk is directed to file it.

It is FURTHER ORDERED that the prehearing stipulation be printed in the joint appendix and shall control further proceedings in this case unless modified by further order of this court.

Dated: August 27, 1959.

BATAVIA TIMES PUBLISHING CO., BATAVIA, N. Y.
10 23 59 80

[fol. 194] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15205

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

GENERAL ELECTRIC COMPANY, Intervenor.

On Petition to Review and Set Aside, and on Cross-Petition for Enforcement of, an Order of the National Labor Relations Board

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Decided April 18, 1960

Mr. Benjamin C. Sigal, with whom Mr. David S. Davidson was on the brief, for petitioner.

Mr. Melvin J. Welles, Attorney, National Labor Relations Board, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom Messrs. Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, and Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent.

Mr. Gerard D. Reilly for intervenor.

Before Prettyman, Chief Judge, and Wilbur K. Miller and Danaher, Circuit Judges.

[fol. 195] OPINION—April 18, 1960

Danaher, Circuit Judge: Respective counsel for Petitioner (Union) and the Respondent (Board) stipulated that the sole issue may be stated thus:

"Whether, under the circumstances of this case, the Board properly concluded that petitioner by *picketing* Gate 3A of the General Electric 'Appliance Park' plant at a time when General Electric was engaged in a labor dispute with the petitioner violated section 8(b)(4)(A) of the National Labor Relations Act, as amended."[1]

The Union has asked us to review and set aside, and the Board asks enforcement of, its order that the Union cease and desist from inducing or encouraging the employees of certain named contractors "or any other employer, except General Electric Company" to engage in a strike or a concerted refusal in the course of their employment to perform certain work or services where an object is to force or require such employers "or any other employer or person, to cease doing business with General Electric Company."

Intervenor, General Electric (Company) maintains a manufacturing plant at Appliance Park, Louisville, Kentucky, where it produces automatic washers, driers, dish washers and other household appliances. The Company during 1957 shipped in interstate commerce finished products valued in excess of $10 million. Some 13 plant buildings are located on a 1,000 acre tract, substantially square, with about 6,600 feet to the side. Surrounding the area is a ditch of such width and depth that vehicles can enter and leave the premises only on five roadways across culverts. At the entrance and on either side of each roadway are metal stanchions, between which a chain may be fastened to block the movement of vehicles during night hours and on non-working days. These entranceways numbered 2, 3, 3A, 4 and 5, are herein called "gates." To various classes of vehicles the Company's plant protection [fol. 196] department, years before the events here critical, had issued stickers of varying size, shape and color. Each vehicle, whether that of a Company employee, or an employee of a contractor, a supplier or the like could readily be identified by the plant guards simply by examination of the type of sticker carried on the windshield. Em-

[1] 61 Stat. 141 (1947).

ployees of the Company had been authorized to use Gates 2, 3, 4 and 5, but *not* Gate 3A.

The Union in July 1958 called a lawful strike against the Company. At that time the Company had some 10,500 employees at Appliance Park, of whom substantially more than one-half (possibly 7,600) were production and maintenance employees for whom the Union had been certified as bargaining representative. Picketing immediately commenced at all gates, *including* Gate 3A. The picketing was peaceful, the pickets carrying signs reading:

LOCAL 761
ON STRIKE
G.E. UNFAIR

The Company kept the plants open, and it was found that more than 2,000 employees represented by the Union continued to work during the strike as did many others not within the bargaining unit.

The Company at that time had outstanding various contracts with some 12 employers. Their jobs included installation, repair and alteration of equipment, converting machinery for products changeovers, retooling, rearrangement of conveyors, installation of presses and the like. Some employers were constructing a truck dock, erecting an air shelter, and laying in a mezzanine floor in one of the plant buildings. General maintenance work beyond the skills or the available manpower of the Company personnel engaged for that purpose was also let to outside contractors. Some of the work in the various collateral lines had been the subject of such contracts over a period of years.

[fol. 197] In earlier experience, some 22 jurisdictional disputes among the craft union employees of the various contractors had resulted in picket lines at gates normally used by the Company employees, thus keeping out the General Electric employees as well as those of the contractors. By 1954, the Company had issued written instructions to its plant security people that use of Gate 3A was to be limited to the independent contractors and their employees, in order to eliminate interference with access by Com-

pany employees. Likewise, all contractors and their employees had been instructed to enter and to leave the Company premises only through Gate 3A. Thus, the Company had established Gate 3A for the sole and separate use of the contractors and their employees at a point some 550 feet from the next nearest gate.

For some years signs at Gate 3A had carried posted notices of the limitation on permitted use, and at least since January, 1958, a large sign erected there had read:

GATE 3-A
FOR EMPLOYEES
OF CONTRACTORS
— ONLY —
G.E. EMPLOYEES
USE OTHER GATES

The trial examiner's discussion of the case, he said, was "based upon the premise that Gate 3-A was reserved exclusively for contractors, their employees and suppliers, and that the Respondent [Union], in picketing at that Gate, did not seek to solicit any of the Company's employees to cease work." Also he concluded that while the Union's appeal at Gate 3A was to secondary employees only, i.e., to employees of persons other than General Electric, the Union picketing there was part of "traditional primary strike action," and hence was for the same lawful object as the picketing at the other four gates. He recommended that the unfair labor practice complaint be dismissed, hav- [fol. 198] ing concluded that section 8(b)(4)(A) does not protect the business of a neutral employer within the situs of a primary dispute.

The Board substantially adopted the findings of the trial examiner, but disapproved his opinion that the picketing at Gate 3A was "traditional" and was protected by the Act.

The Board found from the record as a whole that only the neutral contractors' employees were permitted to use Gate 3A as the Union was well aware. The Board concluded that the Union's object in picketing at Gate 3A was to "enmesh these employees of the neutral employers in its

dispute with the Company. Such purpose is shown not only by the picketing at gate 3-A but also by the oral appeals to the employees of neutrals not to cross the picket line." The Board therefore based its order on its conclusion that: "the Respondent violated Section 8(b)(4)(A) of the Act by inducing and encouraging the employees of independent contractors to engage in a concerted refusal to work with an object of forcing the independent contractors to cease doing business with the Company."

We think the Board has correctly evaluated the finding of the trial examiner as well as its own. In any of these secondary boycott situations the ultimate determination turns upon the union's *objective*. Often "The line is fine,"[2] and circumstances of the particular case must supply the answer to which way the chips are to fall. Here the question may be stated: was it an object of the strike to induce or encourage the employees of the several contractors—not of the primary employer—to engage in concerted refusal in the course of their employment to perform their own work or to render services so that their employers would cease doing business with General Electric?

[fol. 199] In the *Seafarers* case now relied upon by the Union, we considered such questions and found the union's exercise of its section 13[3] rights was not in violation of section 8(b)(4)(A). There, however, the pickets (1) identified themselves specifically as striking only their primary employer, (2) proclaimed by signs clearly showing that they had no dispute with the secondary employer, (3) distributed leaflets which explained in detail not only their own purpose and the reason picketing was conducted at the particular location, but especially excluded the secondary employer and its employees. Moreover the primary employer had placed its ship in the secondary employer's yards and only thereafter were its employees withdrawn; the ship had no other berth at which the union's organizational efforts might be publicized; and the vessel normally was at sea, months on end, with its crew shifts rotated

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[2] Seafarers International Union, Etc. v. NLRB, 105 U.S. App. D.C. 211, 216, 265 F.2d 585, 590 (1959).

[3] 61 STAT. 151 (1947), 29 U.S.C. § 163 (1958).

d transported back and forth by helicopter. The operaons as conducted by the primary employer not only had ecluded the possibility of picketing the ship directly, but evidence of the employer's purpose, the primary emoyer during the night placed a crew aboard the vessel nd towed it away. Such circumstances and such conduct, e concluded, made it clear that the union intended—not shut down the neutral's operations, but to conduct lawful rike activities against the primary employer for the chievement of a protected objective.

The situation here is vastly different. When the strike as called in July 1958, the Union picketed all gates, inluding 3A. "Most, if not all, of the independent contracors' employees refused to cross the picket line, and did ot work during the strike," the Board found. Pickets at ate 3A in some cases refused neutral employees permision to get their tools. Others were told to get passes at he Union office. Others were told, in effect, to "Go on fol. 200] home." There was no showing that Company emloyees made any attempt to utilize Gate 3A. We need not letail additional items.[4] It is sufficient to note that the Board's findings do not lack support in substantial evidence n the record considered as a whole, and we are bound by hose findings.[5]

This was no case of a union's seeking "to influence two employees of a customer of the mill not to cross the picket ine."[6] Rather, the Board reasonably could find, as it did ind, that the Union by peaceful picketing to be sure, but effectively nonetheless, sought to encourage the employees f the independent contractors to engage in a concerted

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[4] One Company employee testified that he had been permitted y a guard to enter that gate on one occasion after January, 1958. o others were shown to have done so. It fairly may be concluded hat Company employees all but exclusively entered the premises t gates reserved for them. On the other hand, numerous emloyees of many independent contractors for years had been using nly Gate 3A.

[5] Universal Camera Corp. v. Labor Bd., 340 U.S. 474, 493 (1951).

[6] Labor Board v. Denver Bldg. Council, 341 U.S. 675, 687 (1951), terpreting the situation in Labor Board v. Rice Milling Co., 41 U.S. 665 (1951).

refusal to perform any services for their employers in the course of their employment and thus to force their employers to cease doing business with the Company.[7]

The objective of the picketing at Gate 3A as so found by the Board brings this case within the statute's range.[8] [fol. 201] The "fine" line must be drawn in favor of the Board's order.

The order of the Board will be enforced.

[fol. 202] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,205

[Title omitted]

On Petition to Review and Set Aside, and on Cross-Petition for Enforcement of, an Order of the National Labor Relations Board.

Before: Prettyman, Chief Judge, and Wilbur K. Miller and Danaher, Circuit Judges.

ORDER GRANTING ENFORCEMENT OF ORDER OF NLRB—
April 18, 1960

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel.

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[7] Electrical Workers v. Labor Board, 341 U.S. 694, 701 (1951); Labor Board v. Denver Bldg. Council, 341 U.S. 675, 689 (1951); Retail Fruit & Veg. Clerks U. v. NLRB, 249 F.2d 591, 599 (9 Cir. 1957); cf. Truck Drivers & Helpers v. NLRB, 101 U.S.App. D.C. 420, 249 F.2d 512 (1951), *cert. denied*, 355 U.S. 958 (1958).

[8] And see Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 1086, 1113, 1114 (1960). Section 707, 73 STAT. 546, makes it clear that the 1959 Act has no applicability to the situation here.

On Consideration Whereof, it is ordered by this court, hat the order of the National Labor Relations Board on eview in this case shall be enforced.

Pursuant to Rule 38( ) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with the opinion of this court.

Per Circuit Judge Danaher.

Dated: April 18, 1960.

[fol. 203] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15205

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

and

GENERAL ELECTRIC COMPANY, Intervenor.

JUDGMENT—May 18, 1960

Before: Prettyman, Chief Judge, and Wilbur K. Miller nd Danaher, Circuit Judges.

This Cause came on to be heard upon the petition of ocal 761, International Union of Electrical, Radio and lachine Workers, AFL-CIO to review and set aside an rder of the National Labor Relations Board issued against 'etitioner herein, its officers, representatives, agents, suc- ssors, and assigns on June 8, 1959, and upon the Board's nswer and request for enforcement of said order. The ourt heard argument of respective counsel on February 16, 960, and has considered the briefs and the transcript of

record filed in this cause. On April 18, 1960, the Court being fully advised in the premises, banded down its decision granting enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, Adjudged and Decreed by the Court, that the said order of the National Labor Relations Board be and the same is hereby enforced; and that said Petitioner, Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO, its officers, representatives, agents, successors, and assigns abide by and perform the directions of the Board in said order contained.

Dated: May 18, 1960.

E. Barrett Prettyman, Wilbur K. Miller, John A. Danaher, Judges, United States Court of Appeals for the District of Columbia Circuit.

[fol. 206] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 207]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

NINTH REGION

Case No. 9-CC-158

In the Matter of:

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (AFL-CIO)

and

GENERAL ELECTRIC COMPANY, APPLIANCE AND TELEVISION RECEIVER DIVISION

Courtroom No. 1, U. S. Post Office Building,
Louisville, Kentucky,
Monday, September 22, 1958.

Pursuant to notice, the above-entitled matter came on for hearing at 10:30 o'clock a.m.

Before:

A. Bruce Hunt, Esq., Trial Examiner.

Appearances:

John H. Rogers, Esq. and John H. Arbuckle, Esq.	6 East Fourth St., Room 1200, Cincinnati, Ohio, appearing on behalf of the General Counsel, National Labor Relations Board.
Herbert L. Segal, Esq. Benjamin Sigal. Esq.	403 Republic Building, Louisville, Kentucky; General Counsel, IUE International, 1126 16th St., N.W., Washington, D. C.; and
John Johnson,	President, Local 761, IUE-AFL-CIO, 5153 Poplar Level Road, Louisville, Kentucky; on behalf of the Respondent.
W. L. Clay, Jr., Esq.	Attorney, General Electric Company, Appliance Park, Louisville, Kentucky, on behalf of the Charging Party.

* * * * * * *

fol. 208] Wilber Goodfleisch, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rogers:

Q. Mr. Goodfleisch, you are employed by General Electric as manager of manufacturing engineering in the household refrigerator department, isn't that right.

fol. 209] A. That's right.

Q. How long have you held that position?

A. Approximately four and a half years.

Q. Now in your duties in that position, a part of your responsibility is to obtain bids and let contracts to independent contractors, is that right?

A. Right.

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[fol. 210] Cross examination.

By Mr. Segal:

• • • • • • •

Q. Did Central Maintenance bid on all of these contracts?

A. Not on all of them.

[fol. 211] Q. Did they bid on any of them?

A. Yes.

Q. Would you please tell us, sir, which ones?

Mr. Rogers: May the record note an objection to this entire line of questioning?

May I have a standing objection to this entire line of questioning?

Trial Examiner: I will overrule the objection to this question.

Name the ones on which Central Maintenance bid.

The Witness: Well, to my knowledge, specifically, they bid on the job as reported in my affidavit, by the Hatfield Electric Company, 2434 Crittenden Drive, Louisville.

Trial Examiner: A local organization?

By Mr. Segal:

Q. A local independent contractor. Is that the bid, sir?

A. Yes, sir.

Q. And what was the Hatfield Electric Company to do?

A. They were to do the associated electrical work connected with rearrangement of our manufacturing facilities, the major job of which was being performed by Servic Erection.

Q. I see. And in what building was this, sir?

A. Building 5.

Q. And I assume that the Central Maintenance bid was rejected and Hatfield got it?

fol. 212] A. To the contrary. Earlier this work was being lanned and organized early in the year, let's say, in Janury and February. We had approached Central Maintenance with the idea that they do this electrical work and ney had assured us that they probably would. However, ney work on a first come, first served basis. By the time e got our engineering straightened around to where the ob could be properly bid, Central Maintenance announced nat they had sufficient work to more than occupy the time f their electrical people and therefore they would not do nis job, so we turned around rather quickly and placed ne job outside.

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fol. 213]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—July 8, 1960

Upon Consideration of the application of counsel for etitioner,

It Is Ordered that the time for filing petition for writ certiorari in the above-entitled cause be, and the same hereby, extended to and including August 16th, 1960.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

ated this 8th day of July, 1960.

[fol. 214]

SUPREME COURT OF THE UNITED STATES

No. 321, October Term, 1960

LOCAL 761, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD et al.

ORDER ALLOWING CERTIORARI—October 24, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.